110-296

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~770.~~ ~~1776~~ 200

H. L. WHITESIDE, APPELLANT,

vs.

J. C. HASELTON, THE BARTOW IRON COMPANY, R. CRAVENS, JAMES P. BOYCE, AND JAMES P. BOYCE, EXECUTOR OF KER BOYCE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 12, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 770.

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J. C. HASELTON, THE BARTOW IRON COMPANY, R. CRAVENS, JAMES P. BOYCE, AND JAMES P. BOYCE, EXECUTOR OF KER BOYCE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

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Be it remembered that at a circuit court of the United States began and held for the eastern district of Tennessee, at the Federal court-rooms in the city of Knoxville, within said district, and the sixth circuit, upon the second Monday, it being the 14th day of January, 1878.

Present and presiding the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit,

The following proceedings were had, to wit:

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET AL. } In equity. No. 651.

Came the defendants, J. C. Haselton and The Bartow Iron Company, and file a duly certified transcript of the record and proceedings in this cause from the chancery court of Marion County.

Transcript of the record in the case of V. A. Gaskill and wife, H. L. Gaskill, vs. J. C. Haselton, Bartow Iron Company, R. Cravens, & James Boyce, in the chancery court at Jaspar, Marion County, Tennessee.

Prosecution bond.

We hereby acknowledge and bind ourselves for the prosecution of the above suit, and payment of all such costs as may be awarded
2 on the final hearing thereof.

August 1st, 1877.

A. G. W. PICKETT.
C. R. GASKILL. [SEAL.]

Filed 8th day of August, 1877. J. A. Walker, C. and M.

Attachment & injunction bond.

Know all men by these presents that we, V. A. Gaskill, H. L. Gaskill, and C. R. Gaskill, are held and firmly bond unto J. C. Haselton & The Bartow Iron Company, R. Cravens, & James P. Boyce, in his own right & as executor of Ker. Boyce, deceased, in the penal sum of five thousand dollars; for which payment, well and truly to be made, we bind ourselves, and each of us, our and each of heirs, executors, or administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of August, in the year of our Lord one thousand eight hundred and seventy-seven.

The condition of the above obligation is such that whereas said V. A. Gaskill and wife hath the day of the date hereof prayed for and obtained from the court of chancery, holden at Jaspar, in the State of Tennessee, a writ of injunction and attachment, returnable to the chancery court, holden at Jaspar, Marion County, on the fourth Monday in October next:

Now, if the said Gaskill & wife, H. L. Gaskill shall prosecute
3 the said injunction and attachment with effect, or in case he fails therein shall well and truly pay and satisfy the said J. C. Haselton & Bartow Iron Company, R. Cravens, & James P. Boyce, in his own right and as executor of Ker. Boyce, deceased, or either of them, all such costs and damages as may be awarded and recovered against

the said Gaskill & wife, H. L. Gaskill in any suit or suits which may be hereafter brought for wrongfully suing out of said injunction and attachment, and shall, moreover, abide by and perform such orders and decrees as the court may make in this cause, and pay such costs and damages as the court may order, then the above obligation to be void; otherwise to remain in full force and effect.

V. A. GASKILL. [SEAL.]
H. L. GASKILL. [SEAL.]
C. R. GASKILL. [SEAL.]
A. G. W. PICKETT. [SEAL.]

Certificate of T. M. McConnell, solvency of parties.

I hereby certify that the parties whose names appear as sureties to this bond for injunction, attachment, & costs have property subject to execution in the county of Hamilton to an amount greater than the bond.

This Aug. 1st, 1877.

T. M. McCONNELL, *C. and M.*

4 Filed 8th day of August, 1877. J. A. Walker, C. and M.

Original bill.

To Hon. W. M. Bradford, chancellor for the 3rd division of Tennessee, and presiding in the chancery court at Jaspar, Marion County, in said State.

V. A. GASKILL & WIFE, H. L. GASKILL (Hamilton Co., Tenn.),
vs.
J. C. HASELTON (NON-RESIDENT), THE BARTOW Iron Company (non-resident), R. Cravens (Hamilton County), and James P. Boyce (non-resident), in his own right and as executor of Ker. Boyce, deceased.

Your complainants humbly represent & show to your honor that they, in right of said H. L. Gaskill, are the owners in fee of one-half undivided interest in the following real estate, to wit: Northeast quarter & northwest quarter of section twenty-seven; the southeast quarter of section 21; the northeast quarter of section 28; the southeast quarter of section 22; all in first fractional township and range six *west* of the basis line, in the Ocole district; the southeast quarter of section 3, 2nd township, rang' six aforesaid; also the northwest
5 quarter of section 2, and one-fourth of the northeast quarter of section 2, both in 2nd fractional township, sixth range aforesaid; also the undivided half of the northwest quarter of section 1; also the undivided half of the following parcels of land: forty acres, being the northwest corner of fourth of the southeast quarter of section 10; the southeast quarter of section 11; the southeast quarter of section 2; the northwest fourth of the northeast quarter of section 2; the northwest quarter, & the remainder previously *we* granted, being one hundred & twenty acres of the northeast quarter of section 10; the northwest corner of the southeast quarter of section 10; and the remainder previously *we* granted, being one hundred and twenty acres of the

southwest quarter of section 9; east half the northeast quarter of section 10; the northeast fractional quarter of section 15; being thirty-eight acres, all in 2d fractional township and range six aforesaid, and all in Marion County, Tennessee. The other interests in said lands being owned or claimed in fee by def't J. C. Haselton, who purchased out
6 the interest of Boyce & Cravens, and divisees of J. A Whiteside, deceased, who held the said other half interest, or it may be now claimed by Bartow Iron Company, by transfer from Haselton. Complainants charge that upon said lands are situated what is known and called the Vulcan Coal Mines, and which are of very great value. On the 1st of June, 1870, for the term of five years, the interest of complainant H. L. Gaskill was leased to the firm of lessees known and called by the name & style of Badge & Eaton, who took possession of the same, and held said interest in said property until 5th Dec'r, 1874, when, on failing to pay rents, and comply with the terms of the lease, complainants filed their bill in this court against them, and defendant Haselton, a confederate in fraud of said Eaton's to recover unpaid rents and to be restored to the possession of said leasehold premises, for all which on 19th Dec'r, 1876, they recovered in this court a decree, and the same being unappealed from, complainants have long since been duly & legally, under the provisions of said decree, placed in the possession of said premises, mines, &c., with defendant Haselton & Bartow Iron Company as a cotenent. During the pending of the said suit
7 vs. Badge & Eaton, J. C. Haselton et al. above referred to, the said Haselton entered into some kind of an arrangement with the defendant Bartow Iron Company under & by which said co. also came into possession of said lands and premises, or at all events a portion of them, including the said part called the Vulcan mines, and of all the fixtures, machinery, appliances, tools, &c., connected to or used in any way in operating said mines, and said co. & said Haselton, who is perhaps a member of the co. and probably the president, have been using, working, & operating said mines from then until now, to wit, from 1st day of June, 1875, or about that, until now; that is the said Haselton & the said co. jointly or in some other way; and for all such time has never accounted or paid to complainants rents for said property, and refuse to do so, all to their injury & in fraud of their rights as cotenants.

Complainants charge that the monthly rents of said property had been worth, or has amounted to at least $, as they believe, and to
8 this date the rents or net proceeds of said mine since the defendants took possession as aforesaid, to wit, on the 1st day of June, 1875, are or should be the sum of $5,000.00, one-half of which belongs to complainants, in the right of said H. L. Gaskill, a portion of the other half of rents arising from said property originally belonged to the devisees of James A. Whiteside, deceased, but their interest, two or three years ago, was sold at judicial sale, and purchased by said Haselton, so that complainants under this bill only claim an account and payment of one-half of the rents or income from said property; the other half belongs to defendants, in some way to be divided between them, with which complainants have nothing to do. And it may be Cravens & Boyce have liens thereon or on that half of interest to some extent, and hence they are made parties.

Complainants further charge, on the first day of February, 1877, they notified defendants in writing that they would not consent to or be liable for any improvements or repairs or expenses in and about the operating of said mines other than those absolutely necessary; a

true copy of which notice is hereto annexed, marked A, as part of this bill, but need not be copied; and they now insist that for any
9 unnecessary repairs and which have been made the defendants should not be allowed to charge complainants with.

They charge, upon information and belief, that said Bartow Iron Co. and said Haselton have embraced within the working and operating of said Vulcan mines lands & coal mines adjoining, and on what is known & called the Raccoon Mountain property or coal mines, and they have been carrying all on together, and it may be they have mixed expenditures and receipts to some extent, but how all this is complainants do not know, and they demand full answers as to the same from defendants.

Complainants charge, upon information and belief, that the said defendant Bartow Iron Company is greatly embarrassed, and they fear and believe to suspension & insolvency. The individuals members of said company are non-residents, and are operating under a charter granted to them by the legislature of the State of the Georgia, & said company is a foreign corporation, not having attained any charter under the laws of Tennessee, as complainants are advised and believe.

They further charge that the said J. C. Haselton is a non-resi-
10 dent, and said to have his residence in the State of New York, but he is often in the city of Chattanooga, Tennessee, and personal service may perhaps be effected on him, and they are informed that the said Bartow Iron Company have an office and place of business at at or near said Vulcan mines in Marion County, Tennessee.

The said Haselton is much involved in business, and in heavy litigation in the courts of the country, both State & Federal; that he claims to have a good deal of property, real and personal, but much of it now rests under attachment, and to the largest portions of his property he only holds equitable or qualified titles, and against he gets through with his litigation, complainants complain and believe he will have but little, if anything, and will be broken up and entirely insolvent; they hope, however, his condition is and will be better than they fear it will be.

Complainants charge the defendant Haselton has an interest in common, to a greater or less extent, in all said lands mentioned and described in this bill, and the defendant Bartow Iron Company have
11 an interest in common to some extent in said lands and Vulcan mines, and the defendants have an interest to the extent of one-half in all the machinery, tools, implements, appliances, and all manner of property used and applied in and about operating of said mines, but as to what extent as between them & said Haselton as an individual, complainants do not know, nor do they deem it material so far as complainants' right' are concerned under this bill.

Complainants are advised and believe they have in equity a lien on the undivided interest of the said Haselton in said real estate and all fixtures, tools, implements, machinery, &c., &c., upon said lands and attached to or connected with said mines, or used in any way in operating of the same, and that said lien should in this court be declared in their favor & enforced for the purpose & to the extent necessary to pay & satisfy whatever amount may be decreed against defendants as a company or as individuals in favor of complainants on account of rents & profits arising from use of said property and mines as hereinbefore charged. They charge that they have demanded an ac-
12 count, settlement, and payment of rents from the defendants, but they refuse to account, settle, or pay said rents due to complainant or any part thereof.

Complainants charge that all such titles & interests as other parties had in said lands, &c., vest from complainant H. L. Gaskill has long since been acquired by said Haselton & he let into possession of the same, so that complainants and said Haselton are tenants in common, owning equal interest in said lands & mines & property, with the qualification that said def't Bartow Iron Company claim some part or portion of Haselton's interest in common with him under some contract, agreements, or arrangements between them. They can disclose their respective interests if deemed important. Complainants are informed and believe that said Haselton is the president of the Bartow Iron Company.

The premises considered, complainants pray that all the parties named as such in the caption be made defendants to this bill and answer it fully, but their answers under oath are expressly
13 waived, and to that end let publication be made as required by law, as well as personal process with copy of bill to Hamilton & Marion Counties. They pray that the defendants be enjoined from selling or transferring their interest in any of the lands, machinery, fixtures, tools, implements, carts, wagons, or any property, personal, mixed, connected with or used in operating said Vulcan mines until further order; this injunction to apply to Haselton & Bartow Iron Company, & all their officers, agents, & attorneys connected with the said lands or business of said mines; and they pray that an attachment issue to attach all said property, real, personal, & mixed, and also to attach the individual estates of said Haselton & Bartow Iron Company, so far as the same may be necessary to satisfy complainants' demand, debt, interest, & all costs of this litigation. This they pray for, for that it will take all firm property, assets, & effects to pay the debts of the Bartow Iron Company, as they, or it, is believed to be embarrassed to insolvency. Upon the hearing of the cause they pray that an account be ordered & taken of all rents received from any houses, cleared land, or any buildings thereon,
14 that is, on the lands described in this bill and used in connection with the operating of said Vulcan mines by defendants, or either of them, since they or either of them have been in possession & controlling of said lands & mines after the 1st day of June, 1875—the said last date mentioned being the date up to which complainants have already received judgment for rents vs. Badge & Eaton & Haselton—& that a final decree be rendered in their favor for the same with all proper interest & costs, and that the equitable lien insisted on in this bill be declared in their favor, and enforced by appropriate decrees of this court.

And they further pray for a sale of all the property which may be attached under this bill, or so much thereof as may be necessary to satisfy complainant's decree for debt, interest, and costs, and the process thereof so applied. They pray that the account above prayed for may show how much coal has actually been taken out of the said Vulcan mines for the time above specified and its value, and also the legitimate & necessary costs to take the same out, and to that end defend-
15 ants are required to file with their answers true copies of or from their books showing the coal mined & actual expenses in doing so, not including coal or expenses taken from and expended in or from the Raccoon Mountain coal mines or property mined in connection with the Vulcan mines.

Complainant prays that partition of said lands & Vulcan mines be had in kind, or if that cannot be done, then let a sale thereof be had

and proceeds distributed amongst those entitled, all under appropriate decrees of your honor.

They pray that defendants show in their answers actual costs per bushel for digging the said coal, and they pray the original books of defendants touching the operation of said Vulcan mines be filed in taking an account in this cause. The defendants are also required to file a schedule with their answers, showing each item of personal property, &c., fixtures connected to or used in operating said Vulcan mines, so that all the property of the tenants in common can be before the court. Let this include all new coal & coke, machinery, &c., &c.; and they pray for all such other further & general relief as they may
16 be entitled to in the whole case. This is complainant's first application for writs of attachment & injunction in this cause.

TREWHITT & TREWHITT.
V. A. Gaskill, Sol's.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared V. A. Gaskill, one of the complainants named in the foregoing bill, and made oath in due form that the facts stated in the foregoing bill, of complainant's own knowledge, are true, & those stated upon information he believes are true.

V. A. GASKILL.

Sworn to and subscribed before me July 31, 1877.
T. M. McCONNELL, *C. & M.*

Fiat of chancellor.

To the clerk and master of the chancery court at Jaspar, Tennessee:

Let this bill be filed, and process issue, and publication, as prayed for, on complainant's executing prosecution-bond. Let attachment & injunction issue as prayed for on compl'ts' executing attachment & injunction bond in double the amount of compl'ts' demand as set forth in the foregoing bill. The bond will be in $5,000.00. August 1st, 1877.
W. M. BRADFORD, *Chancellor.*

17 Filed August 8th, 1877. J. A. Walker, C. and M.

Exhibit A to bill.

J. C. HASELTON, Esq'r,

SIR: We are fully persuaded that to further expend money or incur liabilities in operating the coal mines known as "Vulcan Mines," in Marion County, Tennessee, and the development and operating of any other veins of coal on the lands connected with said Vulcan mines, and particularly on S. E. qr. of sect. 3, and the lands adjoining said S. E. qr. of sect. 3, township 2d, would be injurious and too expensive, and financially ruinous, to such extent we are unwilling to so operate the same, or incur such expenses as tenants in common with you or others connected with you. We therefore hereby notify you that from henceforward, we will not be responsible for any improvements or repair put upon said mines, veins, or property, on our part, or as executor of James A. Whiteside, deceased. If the mines are operated by you, as tenant in common with us, or either of us, we shall expect to receive our part of the net rents, and in no event will we be liable for any

18 of expenses over the rents or proceeds resulting from said mines, veins, or property.
Respectfully.

V. A. GASKILL,
H. L. GASKILL.

Served a copy of this paper upon J. C. Haselton, this Feb. 1, 1877.
N. W. WILLREN, *Const.*

Filed August 8th, 1877.

Subpœna to answer for def'ts in Marian Co.

STATE OF TENNESSEE,
Marian County:

To the sheriff of Marian County:

Summon J. C. Haselton, Bartow Iron Company, R. Cravens, & James P. Boyce to appear on or before the 22nd day of October next, before the chancery court at the court-house in Jaspar, to answer the bill of V. A. Gaskill and H. L. Gaskill, and have you then and there this writ.

This 8th day of August, 1877.

J. A. WALKER.
Clerk & Master.

Issued 8th of Aug., 1877.

J. A. WALKER, *C. & M.*

Came to hand Aug. 8th, 1877.

THOS. P. HALL, *Sheriff.*

Executed by making search, but neither of defendants to be found in my county, & returned to office Sept. 25th, 1877.

THOS. P. HALL, *Sheriff.*

Counterpart subp. to ans.

STATE OF TENNESSEE,
Marian County:

To the sheriff of Hamilton County:

Summon J. C. Haselton, Bartow Iron Company, R. Cravens &
19 James P. Boyce to appear on or before the 22nd day of October next, before the chancery court, at the court-house in Jaspar, to answer the of V. A. Gaskill and H. L. Gaskill, and have you then and there this writ.

This 8th day of August, 1877.

J. A. WALKER,
Clerk & Master.

Issued Aug. 8th, 1877. J. A. Walker, C. & M.

This is a counterpart of an original subpœna this day issued to sheriff of Marian Co.

J. A. WALKER, *C. & M.*

Came to hand Aug. the 13th, 1877, and the same day executed by

handing J. C. Haselton a copy of bill, and summoning him, as president of the Bartow Iron Company and as J. C. Haselton individually, as commanded within.

Executed on R. Cravens, Aug. the 17th, 1877. Search made for J. B. Boyce, and not to be found in my county.

This Aug. 19th, 1877.

C. B. CHAMPION, *Sheriff H. Co.*

Attachment.

STATE OF TENNESSEE,
Marian County:

Whereas V. A. Gaskill & H. L. Gaskill has this day filed a bill of complaint in the chancery court at Jaspar, Tenn., against J. C. Haselton, Bartow Iron Company, R. Cravens, & James P. Boyce, in which complainant has prayed for and obtained from the honorable
20 W. M. Bradford a fiat ordering a writ of attachment to issue to attach the property specified in said bill of complaint:

And said complainant having given bond and security as required by said order granting said attachment: These are therefore to command you to attach the following property, to wit: Northeast quarter & northwest quarter of section 27; the southeast quarter of section 21; northeast quarter of section 28; southeast quarter of section 22, all in 1st fractional township & range 6th, west of the basis line in the Ocoee district; then southeast quarter of section 3 (then 2nd township), range 6 aforesaid; the west quarter of section 2, and one-fourth of northeast quarter, section 2, & other in 2nd fractional township, 6th range aforesaid; undivided half, northwest quarter section; one undivided half forty acres, being northwest corner; fourth of southeast quarter section 10; southeast quarter section 11; southeast quarter section 2; northwest fourth of northeast quarter section 2; northwest quarter of section 10; northeast quarter of section 10; one hundred acres northwest quarter of section 9; east half northeast fraction & quarter of section 15; all in 2nd fractional township & ranges 6th aforesaid, and all in Marian County, Tennessee;
21 all the fixtures, machinery, appliances, tools, &c., connected to or used in any way in operating what is known as the Vulcan coal mines; also all carts, wagons, or any property, personal or mixed, connected with or used in operating said Vulcan mines; also the individual estate of J. C. Haselton & Bartow Iron Company, so far as the same may be necessary, & all coal & coke, machinery, &c.; attach everything mentioned in complainants' bill, a copy being issued herewith, and made a part of this attachment, or so much thereof as shall be of value sufficient to satisfy the debt and claim of complainants, being and the costs of this suit, and you will keep said property safely, so that you may have the same at all times forthcoming, to answer such orders & decrees as the court may make in relation thereto, unless the said defendants shall replevy the same out of your possession, by giving bond with good security in double the value of said property, conditioned to keep the same in the jurisdiction of the court, and to have said property at all timess forthcoming to answer
22 such orders & decrees as the court may make in the cause, and you will make due and legal return of how you have executed this writ.

Witness J. A. Walker, clerk & master of our said chancery court,

at Jaspar, this 4th Monday in April, A. D. 1877, and 101st year of American Independence.

J. A. WALKER,
Clerk & Master.

Issued 8th day of Aug., 1877.

J. A. WALKER,
C. & M.

Came to hand 8th day of Aug., 1877.

THOS. P. HALL,
Sheriff.

Executed according to law by levying this attachment on all the within described property, a schedule of which will be filed, this August the 8th, 1877.

THOS. P. HALL,
Sheriff.

Injunction.

STATE OF TENNESSEE,
Marion County:

To the sheriff of Marion County, greeting:

To J. C. Haselton & Bartow Iron Company and to their counsellors, attorneys, solicitors and agents, and each and every one of them, greeting:

Whereas it has been represented to us, in our court of chancery, at Jaspar, Tenn., in a certain suit between V. A. Gaskill & H. L. Gaskill, complainants, and J. C. Haselton, Bartow Iron Company, R. Cravens & James P. Boyce, defendants, on the part of said complain-
23 ants, that they have obtained from honorable W. M. Bradford an order for this writ of injunction to issue enjoining the said defendants, their agents, their agents' attorneys, &c., from selling, transferring, or in any way whatever conveying any of the following property, to wit: Northeast quarter of northwest quarter of section 27; southeast quarter section 21; northeast quarter section 28; southeast quarter section 22; all in 1st fractional township & rang' 6th west of the basis line in the Ocoee district; the southeast quarter of section 3 (then 2nd township), range 6th aforesaid; northwest quarter section 2, & one-fourth northeast quarter section 2; & other in 2nd fractional township, 6th range aforesaid; undivided half northwest quarter section 1; undivided half, forty acres, being north corner, fourth of southeast quarter section 10; southeast quarter section 11; southeast quarter section 2; northwest fourth of northeast quarter section 2; northwest quarter of section 10; northeast quarter section 10; one hundred acres northwest quarter of section 9; east half northeast fraction & quarter of section 15; all in 2nd fractional township & range 6 aforesaid, & all in Marian County; all the fix-
24 tures, machinery, appliances, tools, &c. connected to or used in any way in operating what is known as the Vulcan coal mines, in Marian County, Tenn.; all carts, wagons, or any personal property or mixed property connected with or used in operating said Vulcan mines; the individual estates of J. C. Haselton & Bartow Iron Company, so far as the same may be necessary; all coal & coke, machinery, &c.;

attach everything mentioned in complainants' bill, a copy being issued herewith and made a part of this injunction. We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said J. C. Haselton, Bartow Iron Company, R. Cravens, & James P. Boyce, & your agents, attorneys & counsellors, and all and every person before mentioned, under the penalty prescribed by law, of your and each of your goods, lands, and tenements to be levied to our use, that you & each of you do absolutely desist from selling, transferring, conveying, or in any manner whatever disposing of the above-mentioned property, or any part thereof, until hearing of this cause in our said court of chancery. Witness, J. A. Walker, clerk & master of
25 our said court, at office in Jaspar, the 4th Monday in April, 1877.

J. A. WALKER, *C. & M.*

Issued 8th day of August, 1877.

J. A. WALKER, *C. & M.*

Came to hand 8th of August, 1877.

THO'S P. HALL, *Sheriff.*

Executed according to law by reading this injunction to A. C. Eaton & Pillsbury as agents for J. C. Haselton, on the 18th day of August, 1877, & returned to office Sept. 25th, 1877.

THO'S P. HALL, *Sheriff.*

Injunction—counterpart.

STATE OF TENNESSEE,
Marian County:

To the sheriff of Marian County, greeting:

To J. C. Haselton, Bartow Iron Company, and to their counsellors, attorneys, solicitors, and agents, and each and every one of them, greeting:

Whereas it has been represented to us, in our court of chancery, at Jaspar, Tenn., in a certain suit between V. A. Gaskill & H. L. Gaskill, complainants, and J. C. Haselton, Bartow Iron Company, R. Cravens, & James P. Boyce, defendants, on the part of said complainants, that they have obtained from honorable W. M. Bradford an order for this writ of injunction to issue enjoining the said defendants,
26 their agents, attorneys, &c., from selling, transferring, or in any way whatever conveying any of the following property, to wit: Northeast quarter & northwest quarters of section 27; southeast quarter section 21; northeast quarter section 28; southeast quarter section 22; all in 1st fractional township & range 6th west of the basis line in the Ocoee district; the southeast quarter of section 3 (then 2nd township), range 6th aforesaid, northwest quarter section 2; and one-fourth northeast quarter section 2, and other in 2d fractional township, 6th range aforesaid; undivided half northwest quarter section 1; undivided half forty acres, being northwest corner fourth of southeast quarter section 10, southeast quarter section 11; southeast quarter section 20; northwest fourth of northeast quarter section 2; northwest quarter of section 10; northeast quarter section 10; one hundred acres northwest quarter section 9; east half northeast fraction & quarter of section 15; all in 2nd fractional township & range 6 aforesaid & all in Marian County; all the fixtures, machinery, appliances, tools, &c., connected to or used in any way in operating what is known as the Vulcan

27 coal mines in Marian Co., Tenn; all carts, wagons, or any personal property, or mixed property connected with or used in operating said Vulcan mines; the individual estate of J. C. Haselton, Bartow Iron Company, so far as the same may be necessary; all coal & coke, machinery, &c.; attach everything mentioned in complainants' bill, a copy being issued herewith and made a part of this injunction.

We therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said J. C. Haselton, Bartow Iron Company, R. Cravens, & James P. Boyce, & your agents, attorneys & counsellors, and all and every person before mentioned, under the penalty prescribed by law, of your & each of your goods, lands, & tenements, to be levied to our use, that you & each of you do absolutely desist from selling, transferring, conveying, or in any manner whatever disposing of the above mentioned property, or any part thereof, until hearing of this cause in our said court of chancery.

Witness J. A. Walker, clerks & master of our said court, at office, in Jaspar, the 4th Monday in April, 1877.

J. A. WALKER, *C. & M.*

28 Issued 8th day of August, 1877.

J. A. WALKER, *C. & M.*

This is a counterpart of an original injunction this day issued to the sheriff of Marian County, Aug. 8th, 1877.

J. A. WALKER, *C. & M.*

Came to hand Aug. the 13th, 1877. Executed by reading and making the contents of the within injunction to J. C. Haselton, president of the Bartow Iron Company, and J. C. Haselton, individually, this Aug. the 13th, 1877.

C. B. CHAMPION, *Sh'iff.*

ENTRIES ON RULE DOCKET.

Original attachment, injunction bill filed in office, August 8th, 1877.

Cost bond.

Cost bond filed August 8th, 1877, with C. R. Gaskill and A. G. W. Pickett, securities.

Attachment & injunction bond.

Attachment & injunction bond filed Aug. 8th, 1877, with C. R. Gaskill & A. G. W. Pickett, securities.

Process to Hamilton County.—Postage.

Subpœna to answer injunction & certified copy of bill (3,000 w.) issued to sheriff of Hamilton County, Aug. 8th, 1877. Postage on process to Hamilton County, 15c.

Issuance of subp. to ans., &c.

29 Subpœna to answer attachment & injunction issued to sheriff of Marian County, August 9th, 1877, with a certified copy of bill (3,000 w.)

Process returned from Hamilton Co.

Subpœna to answer for Hamilton County returned to office August 20th, 1877. Endorsed: Came to hand August 13th, 1877, and the same day executed by handing J. C. Haselton a copy of bill and summoning him as president of the Bartow Iron Company, and as J. C. Haselton individually, as commanded within. Executed on R. Cravens, August the 17th, 1877. Search was made for J. P. Boyce, and not to be found in my county. This August 19, 1877.

C. B. CHAMPION,
Sh'iff Ham. Co.

Injunction.

Injunction to Hamilton County returned to office August 20th, 1877. Endorsed: Came to hand August 13th, 1877. Executed by reading and making the contents of the within injunction to J. C. Haselton, president of the Bartow Iron Company, and J. C. Haselton, individually. This August the 13th, 1877.

C. B. CHAMPION, *Sh'iff.*

Attachment.

Attachment returned to office September 25th, 1877. Endorsed: Came to hand 8th day of August, 1877. Executed according to law by
30 levying this attachment on all the within described property, a schedule of which will be filed. This August 18th, 1877.

THOS. P. HALL, *Sheriff.*

Injunction.

Injunction for Marion County returned to office Sept. 25th, 1877. Endorsed: Came to hand 8th day of August, 1877. Executed according to law by reading the injunction A. C. Eaton & Pits. Berry, as agents for J. C. Haselton, on the 18th day of August, 1877, & returned to office Sept. 25th, 1877.

THOS. P. HALL, *Sh'iff.*

Subpœna to answer.

Subpœna to answer returned to Sept. 25th, 1877. Endorsed: Came to hand August 8th, 1877. Executed by making search, but neither of defendants to be found in my county, & returned to office Sept. 20th, 1877.

THOS. P. HALL, *Sheriff.*

Bond for removal.

Bond to remove cause to Federal court filed in office October 23d, 1877.

Petition.

Petition or affidavit to remove cause to Federal court, filed in office Oct. 23d, 1877.

Non-resident notice.

It appearing from the allegations in complainants' bill, which is sworn

to, that defendants J. C. Haselton, Bartow Iron Company, &
31 James P. Boyce are non-residents of the State of Tennessee, and attachment having been issued and levied upon the property of defendants, in Marion County, Tennessee, consisting of lands, goods, chattels, &c., and said attachment being returned to office, it is therefore ordered by the clerk & master that publication be made in the "Valley Herald," a newspaper published at Jaspar, Tennessee, for four consecutive weeks, notifying said non-resident defendants to appear at the next term of the chancery court, to be holden at the court-house, in Jaspar, Tennessee, on the 22nd day of October next, and make defense to said bill, or the same will be taken for confessed, and the cause set for hearing ex parte as to them. September 25th, 1877.

J. A. WALKER, *C. & M.*

Publication made Sept. 27th, 1877.

J. A. WALKER, *C. & M.*

Bond for removal.

Know all men by these presents that we, the Bartow Iron Company & J. C. Haselton as principals, and James Roop as security, are held & firmly bound unto V. A. Gaskill & wife, H. L. Gaskill, in the penal sum of five hundred dollars, the payment whereof well & truly to be made unto the said V. A. Gaskill & wife, H. L. Gaskill, their
32 heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly & severally, firmly, by these presents, yet upon these considerations: The said Bartow Iron Company & J. C. Haselton having petitioned the chancery court for Marian County, State of Tennessee, for the removal of a certain cause therein pending, wherein V. A. Gaskill & wife, H. L. Gaskill, are complainants, and J. C. Haselton, Bartow Iron Company, Robert Cravens & James P. Boyce in his own right, and as executor of the estate of Ker. Boyce, deceased, are defendants, to the circuit court of the United States in and for the eastern district of Tennessee. Now, if the said Bartow Iron Company & J. C. Haselton, your petitioners, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well & truly pay all costs that may be accrued by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue. Witness our hands & seals this the 20th day of October, A. D. 1877.

BARTOW IRON COMPANY,

33 By J. C. HASELTON, *President.* [SEAL.]
J. C. HASELTON. [SEAL.]
JAS. ROOP. [SEAL.]

Affidavit of Jas. Roop.

STATE OF TENNESSEE,
Marian County:

I, James Roop, of said county, the security named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Tennessee and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities, and exemptions of property by law exempt from execution;

that I have property in the State of Tennessee liable to execution, of the value aforesaid, that five hundred dollars.

JAMES ROOP.

Subscribed to in my presence by James Roop and by him sworn to before me, this the 23rd day of October, 1877.

J. A. WALKER, *C. and M.*

Chancery court, Jasper, Tennessee. Filed in office October the 23rd, 1877. J. A. Walker, C. and M.

Petition for removal of cause.

In the chancery court at Jaspar, Marian County and State of Tennessee.

V. A. GASKILL AND WIFE, H. L. GASKILL, *vs.* J. C. HASELTON, BARTOW IRON COMpany, Robert Cravens, and James P. Boyce in his own right and as executor of Ker. Boyce, deceased. } Petition for removal to the circuit court of the United State for the eastern district of Tennessee.

34

To the honorable W. M. Bradford, chancellor, presiding in said chancery court.

Your petitioner J. C. Haselton and Bartow Iron Company, respectfully show to this honorable court that the matter and amount in dispute in the above-entitled suit exceed, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different States, and that your petitioner, J. C. Haselton, was at the time of the commencement of this suit, and still is, a citizen of the State of New Jersey, and that your petitioner, the Bartow Iron Company, was at the time of the commencement of this suit, and still is, a citizen or corporation of the State of Georgia; that said defendant Robert Cravens, was at the time of the commencement of the suit and still is, a citizen of Hamilton County, Tennessee; that James P. Boyce was at the time of the commencement of said suit, and still is, a citizen of the State of Kentucky; and that complainant V. A. Gaskill, and wife, H. L. Gaskill, were at the time of the commencement of said suit, and still are, citizens of Hamilton County, State of Tennessee.

35

Your petitioners state that in the said suit above-mentioned, there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the petitioners and the said V. A. Gaskill & wife, H. L. Gaskill, in which the said Cravens, and Boyce, in his own right, or as executor, are not parties actually interested, and that said suit is one in which there can be a final determination of the controversy so far as it concerns your petitioners and the said V. A. Gaskill and wife, H. L. Gaskill, without the presence of the other defendants as parties in the cause; said suit is pending, and this, the October term of this court, is the appearance term. And your petitioners offer herewith a bond, with good and sufficient surety for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and they pray this honor-

36

able court to proceed no further herein except to make the order of removal required by law, and to accept said suits and bond, and to cause the removal herein *herein* to be removed into said circuit court of the United States in and for the eastern district of Tennesee, and they will ever pray.

NASH. H. BURT,
E. M. DODSON,
Sol'rs for Petitioners.

STATE OF TENNESSEE,
Hamilton County:

This day personally appeared before me, J. A. Harris, an acting justice of the peace in and for said county and State, J. C. Haselton and F. J. Stone, secretary and treasurer of the Bartow Iron Company, and made oath that the facts stated in the foregoing petition are of their own knowledge true, and that stated upon information they
37 believe to be true, each being separately. And the said Stone, in further verification of or to said petition, affixes hereto the corporate seal of said Bartow Iron Company.

[SEAL.] J. C. HASELTON.
BARTOW IRON COMPANY,
By F. J. STONE AND NASH. H. BURT, *Sol.*
By J. C. HASELTON, *President.*

Sworn to & subscribed before me this the 19th day of October, 1877.
J. R. HARRIS,
Justice of the Peace for Hamilton County, Tennessee.

Filed in office October the 23rd, 1877. J. A. Walker, C. and M.

Caption of court, Thursday, October 25th, 1877.

THURSDAY, *October 25th*, 1877.

Court met pursuant to adjournment.

Present and presiding, the honorable W. M. Bradford, chancellor for the third chancery division of the State of Tennessee, when the following proceedings were had, to wit:

V. A. GASKILL & WIFE, H. L. GASKILL,
vs.
J. C. HASELTON, BARTOW IRON COMPANY, Robert Cravens, James P. Boyce in his own right & as executor of Ker. Boyce, deceased.

Upon reading and filing the petition of the above named J. C. Haselton & Bartow Iron Company, defendants herein for the removal of
38 this suit into the circuit court of the United States for the eastern district of Tennessee, in pursuance of the laws of the United States relating to the removal of suits from the State courts, and upon filing the security offered by said defendants according to the requirements of said laws, and on motion of Nash. H. Burt, solicitor for the said defendants: It is hereby ordered that the said security be accepted, and the said suit be removed into the next circuit court of the United States to be held in the said eastern district of Tennessee, & that no further proceedings be had in said suit in this court. The motion of respondents was resisted by complainants' counsel, and the action of the court excepted to by compl'ts' counsel.

Caption of court, Wednesday, Oct. 31st, 1877.

WEDNESDAY, *October 31st*, 1877.

Court met pursuant to adjournment.

Present and presiding, Hon. W. M. Bradford; when the following proceedings were had, to wit:

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET AL.

On this day came complainant's counsel and moved the court
39 to vacate for the present the order heretofore made at present term to remove this cause to the circuit court of the United States, at Knoxville, Tennessee, and further moved the court to order and direct the sheriff who has possession and charge of the store-goods attached in this cause to sell them as perishable property, and hold the money subject to the further order of the court, and for the order of the court to stand prior to the order of the court removing the cause to the United States circuit court; which motion is continued for action to a future day of this term of the court.

Caption of court, Friday, Nov'r 2nd, 1877.

FRIDAY, *November 2nd*, 1877.

Court met pursuant to adjournment—present and presiding, the honorable Wm. Bradford, chancellor for 3rd chancery division for the State of Tennessee—when the following proceedings were had, to wit:

V. A. GASGILL & WIFE
vs.
J. C. HASELTON ET ALS.

This cause came on to be heard this 2d day of November, 1877, before the Hon. W. M. Bradford, chancellor, presiding, upon the
40 complainant's motion to vacate the order heretofore made in this cause to remove the cause from this court to the circuit court of the United States, and after consideration the court overrules and disallows said motion and refuses to vacate said order, and also refuses to order a sale of said property.

Bill of cost.

V. A. GASKILL & H. L. GASKILL
vs.
J. C. HASELTON & BARTOW IRON CO., R. Cravens, & James P. Boyce.

BILL OF COST.—Bill of cost, cause No. 519—State tax, $5.00; county tax, $5.00.

J. A. Walker, C. & M.: Attachment & injunction bond, 50c.; subpœna to answer for Marian Co., 75c.; filing bill, 25c.; taking cost bond, 25c.; attachment to sheriff of Marian Co., $1.00; injunction to sheriff of Marian Co., $1.00; certified copy of bill for parties in Marian Co. (3,000 w.), $3.00; certificate to same, 25c.; subpœna to ans. for parties in Ham-

ilton Co., 75c.; injunction to she'ff Hamilton Co., $1.00; certified copy of bill to Hamilton Co. (3,000 w.), $3.00; certificate to same, 25c.; postage on process to Hamilton Co., 15c.; five rules, 50c.; taking bond for removal of cause to Federal court, 15c.; filing petition to remove cause, 25c.; 3 orders, 75c.; 1 order of publication, 50c.; 3 docketings,
41 30c.; taxing bill of cost, 50c $15.45
Making out transcript for United States court (8,700 w.),
$8.70 ..... 8.70
Certificate, 25c.; seal, 50c 75

Total amount of bill of cost $34.90

I, J. A. Walker, clerk & master of the chancery court at Jaspar, Tennessee, do certify that the foregoing is a full, true, and perfect transcript of the record and bill of cost remaining in my office in the case of V. A. Gaskill & wife, H. L. Gaskill, against J. C. Haselton & Bartow Iron Company, R. Cravens, & James P. Boyce.

Given under my hand & seal of court at office in Jaspar, Tennessee, on this the 19th day of November, 1877.

[SEAL.] J. A. WALKER, *C. & M.*

(Endorsed:) No. 651. V. A. Gaskill & wife vs. J. C. Haselton et al. From chancery court of Marian Co. Filed January 14th, 1878. H. M. Aiken, clerk.

Caption of U. S. cir. c't.

Be it remembered that at a circuit court of the United States began and held for the eastern district of Tennessee at the Federal court-room in the city of Knoxville, within said district, and the sixth circuit
42 upon the second Monday, it being the 14th day of January, 1878. Present and presiding, the honorable John Baxter, judge of the United States circuit court for the sixth circuit.

MONDAY MORNING, *January 28th*, 1878.

Court met pursuant to adjournment; present and presiding, the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS. } In equity. No. 651.

No one appearing to prosecute this suit, or defend the same, it ordered by the court that this cause be continued until the next term of this court.

Demurrer of Bartow Iron Co.

V. A. GASKILL & WIFE, H. L. GASKILL,
vs.
J. C. HASELTON ET ALS. } In chancery at Jaspar, Tenn. Demurrer.

The demurrer of the respondent, the Bartow Iron Company to such parts of complainants' bill as charge respondent with mining coal upon

the Raccoon Mountain property, in connection with the mining
43 of coal upon other lands, and mixing expenditures and receipts in regard thereto, and such parts of the prayer of complainants' bill praying for an account and discovery as to the amount of coal mined, and the costs and expenses of mining coal, and for the books of respondent in this regard, and for a schedule of the personal property, machinery, implements, &c., of this respondent, or as such to compel this defendant to make any discovery touching the same, or any of the matters relating thereto in the said bill suggested or alleged, this respondent by protestation not confirming or acknowledging any of the matters or things thereto in the said bill comprised, to be true in such sort, manner, and form as the same are therein alleged or set forth, this respondent does demur, and for causes of demurrer shows:

1. Because the prayer of the bill ignores any recovery for rents as regards the coal mined from the Racoon Mountain property, and because the bill shows complainants are not suing as the representatives
44 of said James A. Whiteside's estate.

2. Because the costs and expenses of mining coal, the schedule of personal *personal* property, and the books of respondent are wholly immaterial to any equity shown by complainants, and because the same are impertinent, intended only to harrass respondent, and to serve no other purpose than to gratify the prying curiosity of complainants: Wherefore and for divers other good causes of demurrer in the complainants' said bill of their own showing, appearing, this respondent as to so much of the complainants' said bill as before is set forth does demur, and does demand the judgment of this honorable court, whether it ought or shall be compelled to make any answer thereto other or otherwise than as aforesaid to such parts of the said bill as it has so demurred unto, and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

NASH H. BURT,
E. M. DODSON, *Sol'rs.*

(Endorsed;) No. 651. V. A. Gaskill & wife vs. J. C. Haselton
45 & Bartow Iron Co. Demurrer of Bartow Iron Company. Filed Feb'y 6, 1878. H. M. Aiken, clerk.

Pleas and answer of Bartow Iron Co.

The pleas, and answer in support thereof, of the Bartow Iron Company to so much and such parts of the bill of complaint of V. A. Gaskill and wife, H. L. Gaskill, as relate to the title of the southeast quarter of section 3, 2 T., R. 6, in the Ocoee district, west of the basis line, in Marian County, described in said bill filed against said company and others in the chancery court at Jaspar, Tennessee.

1. This respondent, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainants' bill mentioned to be true, in such manner and form are therein and thereby set forth and alleged, doth plead thereunto, and for plea says: that the said complainants nor either of them have nor had at the time of filing their said bill, to wit, on the 18th day of August, 1877, nor at any time prior to said date, any good and sufficient title nor possession
46 to the southeast quarter of section 3, in the 2d township, 6 range west of the basis line, Ocoee district, in Marian County, Tennessee from which, as described in their said bill, they pray an account for

rents and profits, nor to any part thereof; nor does this respondent and complainant hold said quarter section, or any part thereof, as tenants in common, as in said bill described, and for which the said complainants sue for rents and pray a partition of this quarter section, with other lands. This respondent therefore pleads those matters in bar of complainants' suit, and prays the judgment of court whether it shall be required to make any other or further answer to said parts of said bill, other than an answer in support of this plea, and it prays to be hence dismissed with its reasonable costs in this behalf expended.

NASH. H. BURT,
E. M. DODSON,
Solicitors.

This day personally appeared before me, J. R. Harris, an acting justice of the peace in and for the county of Hamilton and State of
47 Tennessee, J. C. Haselton, president, and F. J. Stone, secretary & treasurer of the Bartow Iron Company, and made oath that the facts stated in the foregoing plea of their knowledge are true, and those stated upon information they believe to be true, and from their acquaintance with the facts, the said plea is true in substance and in fact, and in further verification of said plea they hereunto subscribe their names and affix the corporate seal of said company.

[SEAL.] BARTOW IRON COMPANY,
By F. J. STONE, *Sec't'y & Treas.*,
By J. C. HASELTON, *President.*

Sworn to & subscribed before me this the 19th day of Oct., 1877.
J. R. HARRIS,
Justice of the Peace for Hamilton County.

And this respondent, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth further plead thereunto, and for plea says, that this respondent is the bona-fide owner of said land,
48 to wit, the SE. ¼ of section 3, in the 2d township, 6th range west of the basis line of the Ocoee district in complainants' said bill described; that J. C. Haselton was at and prior to the date and execution of the deed hereinafter set forth seized or entitled in fee-simple of the said quarter section, being also in the quiet and uninterrupted possession and enjoyment; that he, the said J. C. Haselton, by his deed of conveyance duly delivered by him to this respondent on the day of September, 1875, duly registered in the register's office for Marian County, Tennessee, for a full and valuable consideration which was on the same day of the execution of said deed in hand paid by this respondent to the said J. C. Haselton, did within the State of Georgia, the residence of this respondent, bargain and sell, and transfer and convey said quarter section (together with other lands) aforesaid; and this respondent avers that said purchase of said quarter section was made and the consideration thereof fully paid as aforesaid and
49 said conveyance taken all in good faith, and that this respondent had not at the date of any of said transactions, or at any time previously thereto, any notice or knowledge whatever of any valid claim or supposed claim of the complainants to said quarter section of land, which they so indefinitely & imperfectly attempt to set out in their bill. This respondent therefore pleads this matter in bar of complainants'

suit, and prays the judgment of the court whether it shall be required to make any other or further answer to said parts of said bill, and it prays to be hence dismissed with its reasonable costs in this behalf expended.

NASH. H. BURT,
E. M. DODSON,
Solicitors.

This day personally appeared before me, J. R. Harris, an acting justice of the peace in and for the county of Hamilton and State of Tennessee, J. C. Haselton, president, and F. J. Stone, secretary & treasurer, of the Bartow Iron Company, and made oath that the facts stated
50 in the foregoing plea of their own knowledge are true, and those stated upon information they believe to be true, and from their acquaintance with the facts; and in further verification of said plea they herewith subscribe their names and affix the corporate seal of said company.

[SEAL.] BARTOW IRON COMPANY,
By F. J. STONE, *Sec'ty & Treas.*,
By J. C. HASELTON, *Pres.*

Sworn to & subscribed before me this the 19th day of Oct., 1877.
J. R. HARRIS,
Justice of the Peace for Hamilton County.

And this respondent, answering in support of said pleas, and each of them, says that the coal mined from the said Vulcan mines for the period stated by complainants has been wholly from the said SE. ¼ of section 3, described in the foregoing pleas, and from the NW. ¼ of sec. 11, complainants in their said bill insisting upon no account of rents for coal mined from the latter quarter section, the same being a part of the Raccoon Mountain property; that repondent holds said SE.
51 ¼ of section 3 by a bona-fide purchase and conveyance in fee from J. C. Haselton, dated the *the* 8th of September, 1875, and duly registered, which, or a duly certified copy, will be produced on the trial or hearing of said pleas or at any time required; that respondent was no party to the suit mentioned by complainants in their said bill, and it is advised that the doctrine of lis pendens as to notice of any claims by complainants does not apply to suits in other counties than that in which said land is situate; that upon information this respondent believes and is advised that said suit is not yet finally determined, and that the claim mentioned, and in fact the whole case, will be appealed from to the Supreme Court when said suit shall have been finally decreed upon.

Respondent denies that complainants were ever put into the possession of said SE. ¼ of sec. 3. It is true that, from the proceedings in said suit mentioned in complainants' bill, it appears *it appears* that on
52 the 27th day of January, 1877, a writ of possession was issued by the clerk & master of the chancery court for Hamilton County, directed to the sheriff of Marian County, and which is in the handwriting of complainant, V. A. Gaskill, is endorsed or appended a return to show its execution, though signed by "Thos. P. Hall, sheriff of Marian County, Tenn.," and dated on the 30th January, 1877. The substance of said return or attempted execution of said writ is, that said V. A. Gaskill, as agent of V. A. Gaskill & wife, H. L. Gaskill, was placed in the quiet, peaceable, and undisturbed possession of the undivided one-half interest in the prop-

erty mentioned in said writ, and which in said writ is described as the lands embraced by the terms of the lease, an exhibit marked "A" in complainants' bill in said suit (granted by complainant H. L., before her marriage to V. A. Gaskill, to Badge & Eaton, for the purpose of mining coal), and in the deed of E. Alley to H. L. Whiteside, dated 26th April, 1870, and being the same property upon which the Vulcan mines are located
53 in Marian County, Tennessee, including said Vulcan mines, and all the buildings, houses, tramways, tracks, entries, and approaches to said mines, &c. Now, this respondent avers that the Vulcan mines are comprised of several parts of distinct quarter sections, and held by separately described tracts in conveyances, as well as different interests in titles, &c.; that in neither in said Exhibit A, said lease to Badge & Eaton referred to in said writ, nor in the decree awarding the writ, on the several quarter or parts of quarter sections set out—nothing to distinguish one from another, and so it is respondent is advised that said writ is void, the same being greater than the decree awarding the same. Respondent is advised that said decree itself should have settled the boundaries of the Vulcan mines, and that complainants are not vested with any power to determine of themselves said boundaries, &c., and it avers that said decree does not specifically refer to any specific writing for any definite description, and re-
54 spondent further avers that said writ could only issue and affect Badge & Eaton, who had long before the date of said decree ended their lease and surrendered the possession to said Haselton, from whom respondent was soon thereafter seized and possessed. Respondent is advised that the courts of the county in which the land is situate have exclusive jurisdiction as to possessory rights, and that a court of Hamilton County cannot direct a writ of possession to Marion County; consent to the trial of the cause in a county other than that where the land lies will not confer the jurisdiction. Respondent is further advised and avers that if said writ is such as could be lawfully issued, that it was prematurely issued, said suit not having been finally determined, or at least such will be the effect when said cause shall have been appealed to the Supreme Court. As a matter of fact respondent denies that said complainants were ever actually put into possession of said mines, as shown by the execution of said writ, or otherwise, or if put into such possession, the same was instantly aban-
55 doned. The facts are these: Said V. A. Gaskill and said sheriff went to the mines, made known the contents of said writ to A. L. Eaton, agent of this respondent, who refused to yield assent to any possession; that whereupon said Gaskill and sheriff walked some distance upon the mountain-side to get within the boundaries of said SE. ¼ of section 3, and then doubtless went over or through the forms of reading said writ, returned and went home, said Gaskill no doubt having written the execution of the writ for the sheriff to sign before leaving Chattanooga. Hence if said writ is valid its execution was theoretical, and not actual or practical, and respondent avers that the return by the sheriff of the execution of said writ is false; and respondent denies that it has ever in any manner whatever acknowledged any right in complainants, or either of them, as tenants in common, or as having any interest, possession, or right of possession to any part or parcel of said SE. ¼ of section 3. Respondent came into possess-
56 sion in a bona-fide manner, and under and by virtue of a bona-fide purchase, and all charges to the contrary are denied. Respondent denies that said Haselton had any connection as a stockholder or officer, or otherwise, with respondent till after said purchase.

It is true respondent has paid no rents to complainants, for none are due them, as already shown; and respondent denies having committed any act, by word or deed, recognizing any rights of complainants whatever to said SE. ¼ of section 3, and respondent prays to be hence dismissed with its reasonable costs in this behalf sustained.

NASH. H. BURT,
E. M. DODSON, *Sol'rs.*

This day personally appeared before me, J. R. Harris, an acting justice of the peace in and for the county of Hamilton, State of Tennessee, J. C. Haselton, president, and F. J. Stone, secretary & treasurer, of the Bartow Iron Company, and made oath that the facts stated in the foregoing answer are of his own knowledge true, and those stated
57 upon information they believe to be true; and, in further verification of said answer, they herewith subscribe their names and affix the corporate seal of said company.

[SEAL.] BARTOW IRON COMPANY,
By F. J. STONE, *Sec't'y & Treas.*,
By J. C. HASELTON, *President.*

Sworn to & subscribed before me this the 19th day of Oct., 1877.
J. R. HARRIS,
Justice of the Peace for Hamilton County, Tennessee.

(Endorsed:) No. 651. Pleas & answer. V. A. Gaskill & Wife vs. J. C. Haselton, Bartow Iron Co. Filed Feb'y 6, 1878. H. M. Aiken, cl'k.

Answer to part of complainants' bill.

V. A. GASKILL & WIFE, H. L. GASKILL,
vs.
J. C. HASELTON, BARTOW IRON COMPANY et als.
} In chancery, at Jasper, Tenn.—Answer.

The Bartow Iron Company, not waiving its pleas and answer in support thereof nor its demurrer touching certain parts of complainants' bill, for answer to that part of said bill as to complainants' interest in other lands than said SE. ¼ of section 3, and as regards a parti-
58 tion or sale for division thereof, this respondent answers and says, it has nothing to do with any other than the lands purchased of said Haselton in September, 1875.

The description of the lands in addition to that of said SE. ¼ of section 3, so purchased, are as follows: An undivided half interest in the NE. ¼ & NW. ¼ of sec. 10; E. ½ of SE. ¼ of sec. 10, & NW. ¼ of SE. ¼ of sec. 10, being 120 acres; SE. ¼ of sec. 2; E. ½ & the NW. ¼ of SW. ¼ of sec. 9, being 120 acres; and the undivided ¾ths interest in the NE. ¼ & NW. ¼ of sec. 11; SW. fractional ¼ of sec. 11 (120 acres); SW. ¼ of sec. 3, & S. ½ of NW. ¼ of sec. 3; all in 2d fractional township, range 6th, west of basis line, Ocoee district. Respondent avers that said descriptions are correct, whether they correspond with those in complainants' bill or not. The heirs of the late James A. Whiteside not having been made parties to the bill, no partition or sale, respondent is advised, can be made of such lands in which they have an interests. Should the court have the power, respondent cannot resist a partition or sale as to such lands as are held in common by com-
59 plainants and respondent. Respondent has no interest in common with said Haselton in any of said lands, nor any of said per-

sonal property, either by contract, agreement, or arrangement between them as charged. It is true respondent is a non-resident, is a corporation solely by virtue of the laws of the State of Georgia; Haselton is its president, and is a stockholder; became such since respondent's said purchase. Respondent prays to be hence discharged with its reasonable costs in this behalf sustained.

NASH H. BURT,
E. M. DODSON,
Sol'rs.

This day personally appeared before me, J. R. Harris, an acting justice of the peace in and for the county of Hamilton, State of Tennessee, J. C. Haselton, president, and F. J. Stone, secretary & treasurer of the Bartow Iron Company, and made oath that the facts stated in the foregoing answer of their own knowledge are true, and those stated on information they believe to be true; and in further verification of said answer they attach the seal of said corporation and subscribe their names.

60

BARTOW IRON COMPANY,
By F. J. STONE, *Sec'y & Treas.*,
By J. C. HASELTON, *President.*

Sworn to & subscribed before me this the 19th day of Oct., 1877.
J. R. HARRIS,
Justice of the Peace for Hamilton County, Tennessee.

(Endorsed:) No. 651. V. A. Gaskill & Wife vs. J. C. Haselton, Bartow Iron Company. Answer to part of complainants' bill. Filed Feb'y 6th, 1878. H. M. Aiken, cl'k.

Separate answer of J. C. Haselton.

The separate answer and cross-bill of J. C. Haselton to the bill of complaint and attachment and injunction bill of V. A. Gaskill and wife, H. L. Gaskill, filed against him and others in the chancery court at Jaspar, Tennessee.

This respondent, saving and reserving the usual benefit of exceptions to said bill, for answer thereto, or to so much thereof as it is material for him to answer, says that in September, 1875, he sold and conveyed in fee, for a valuable consideration to him paid, to the Bartow Iron Company the following lands, of which he was the bona-fide owner, and in the undisturbed possession, to wit: The SE. ¼ of sec. 3; the undivided half of the following, to wit, the NE. & NW. ¼s sec. 10, E. ½ of SE. ¼ sec. 10, & NW. ¼ of SE. ¼ sec. 10, being 120 acres; SE. ¼ sec. 2, E. ½ & NW ¼ of SW. ¼ sec. 9, being 120 acres; and also the three-fourths undivided interest in the following, purchased of Boyce & Cravens, and upon which they hold a lien for a balance of the unpaid purchase-money, to wit, the NE. & NW. ¼ of sec. 11; 120 acres of the SW. fractional ¼ sec. 11; SW. ¼ sec. 3, range 6, west of the basis line, Ocoee district, in Marian County, Tennessee. Complainants' descriptions and alleged ownerships are inaccurate and cannot be relied on. The following will more clearly define the lands and ownerships:

61

Deed of E. Alley to Haselton & Agnew, dated January 7, 1859, contains the—

NE. & NW. ¼s.....Sec. 27
SE. ¼ ..... " 21
NE. ¼ ..... " 28
SE. ¼ ..... " 22
In 1 fr. T. and also the
NW. ¼ ..... Sec. 2
62 ¼ of the NE. ¼ of....Sec. 2
In the 2d fr. T. and an undivided half in the—
NW. ¼ .....Sec. 1
40 acres being the—
NW. ¼ of the SE. ¼ of..... " 10
SE. ¼ ..... " 3
SE. ¼ ..... " 2
NW. ¼ of the NE. ¼ of .... " 2
NW. ¼ ..... " 10
120 acres of the NE. ¼..... " 10
NW. of the SE. ¼ ..... " 10
120 acres of the SW. ¼ .... " 9
E. ½ of the SE. ¼..... " 10
NE. fr. ¼ (38 acres)..... " 15
In 2d fr. T.
Conveyed subject to the rights of way and privileges of water for the N. & C. R. R.

Under said order of sale the following lands are advertised:

NE. & N. ¼s.....Sec. 21
NE. ¼ ..... " 28
SE. ¼ ..... " 22
In 1 fr. T.
NW. ¼ ..... " 2
63 ¼ of the NE. ¼ .....Sec. 2
In 2 fr. T.
NW. ¼ ..... " 1
40 acres being the—
NW. ¼ of SE. ¼ ..... " 10
SE. ¼ ..... " 11
SE. ¼ ..... " 2
NW. ¼ of the NE. ¼ ..... " 2
NW. ¼ ..... " 10
120 acres of the NE. ¼..... " 10
NW. ¼ of the SE. ¼ ..... " 10
120 acres of the SW. ¼ .... " 9
E. ½ of the SE. ¼..... " 10
NE. fr. ¼ (38 acres)..... " 15
In 2d fr. T.
Rights of way, &c.

A decree to sell, and said vendor's bill recites the following:

NE. & NW. ¼s.....Sec. 21
NE. ¼ ..... " 28
SE. ¼ ..... " 22
In 1st fr. T.
NW. ¼ ..... " 2
¼ of the NE. ¼ .....Sec. 2
In 2d fr. T.
NW. ¼ .....Sec. 1
40 acres being the—
NW. ¼ of the SE. ¼..... " 11
SE. ¼ ..... " 2
NW. ¼ of the NE. ¼..... " 2
NW. ¼ ..... " 10
120 acres of the NE. ¼..... " 10
NW. ¼ of the SE. ¼..... " 10
120 acres of the SW. ¼ .... " 9
E. ½ of the SE. ¼..... " 10
NE. fr. ¼ (38 acres)..... " 15
In 2d fr. T.
Rights of way, &c.

The decree confirming the sale describes the following:

NE. & NW. ¼s.....Sec. 21
NE. ¼ ..... " 28
SE. ¼ ..... " 22
In 1 fr. T.
NW. ¼ ..... " 2
¼ of the NE. ¼ .....Sec. 2
In 2 fr. T.
NW. ¼ ..... " 1
40 acres being the—
NW. ¼ of the SE. ¼..... " 10
SE. ¼ ..... " 2
NW. ¼ of the NE. ¼..... " 2
NW. ¼ ..... " 10
120 acres of the NE. ¼ .... " 10
NW. ¼ of the SE. ¼..... " 10
120 acres being of the SW. ¼. " 9
E. ½ of the SE. ¼..... " 10
NE. fr. ¼ (38 acres)..... " 15
In 2d fr. T.
Rights of way, &c.

Respondent by purchase became the owner of Agnew's interest. Erasmus Alley sold the lands, and enforced his lien as vendor in the chancery court, and through the supreme court by appeal. At the sale complainant H. L. Gaskill, then Mrs. Whiteside, purchased such lands

as were described in the pleadings. The foregoing is to show
64 what lands were sold by Alley, what decreed to be sold, what were advertised, and what lands were in fact purchased by her, and from which, it will be seen, that she did not purchase the NE. & NW. ¼s of sec. 27, and the SE. ¼ of sec. 21, and the ¼ of the NE. ¼ of sec. 2 in the factional township mentioned, nor the undivided half interest in the NW. ¼ of the SE. ¼ of section 10 nor in the SE. ¼ of sec. 3 in said fractional township.

Respondent purchased of Boyce and Cravens their ⅜th interest of the estate of James A. Whiteside, ⅛th interest in said SE. ¼ of sec. 3, and was the owner of the same in fee at the time he sold to the Bartow Iron Company as stated. After said sale respondent was made president, and is now the president of said Bartow Iron Company. Prior to said sale he had no part as a stockholder or otherwise connected with said corporation, and since said sale, the deed for which was duly registered and well known to complainants, this respondent never had, nor did he ever claim, nor has he at any time, nor does he now claim or pretend to have any right, title, or interest
65 of, in, or to the estates and premises sold said Bartow Iron Company, or in any part thereof, situate and set forth heretofore in this answer, as shown, and he does now disclaim all right, title, and interest to the said estates and premises, and every part thereof, otherwise than that as one of the stockholders in said Bartow Iron Company, and this respondent denies that he is liable to account for any rents since said sale, or that he is in any manner liable for the same, or that he has had, nor has any connection with said estates and premises other than being a stockholder and president of said Bartow Iron Company, and respondent denies all charges and allegations and insinuations in complainants' bill to the contrary of what he avers and shows. He denies any fraudulent or any combination or confederation or collusion between himself and said Bartow Iron Company. Respondent denies that he owes complainants any rents before said sale to the Bartow Iron Company, but on the
66 contrary avers that complainants are largely indebted to him for rents, as will be shown upon an account stated in this cause, extending back for a series of years, and in regard to which, and that justice may be done, this answer will be filed as a cross-bill, and a statement of such rentals hereinafter set out. He denies that he held said lands or their possession in any fraudulent manner. The lease to Badge & Eaton had expired, if indeed it could be called a lease, for Badge & Eaton at the time were respondent's tenants, compelled to attorn to him, and could not deny the landlord's title by leasing from complainants. Becoming satisfied with this, and never holding, as they conceived, adversely to respondent, their possession was surrendered, leaving respondent in the quiet and peaceable possession and *and* enjoyment of said estates and premises, which were surrendered to the said Bartow Iron Company, when it purchased, and it alone has been
67 operating and running the mines ever since, and in no manner is this respondent individually liable for any of its rents or debts.

The only purpose complainants have in connecting respondent in this litigation is to harrass and oppress him, and impound his property, and to destroy his credit, to coerce him, or to surreptitiously obtain advantages over this respondent in other wicked and unjust lawsuits that complainants have against him, in which they set forth unconscionable demands.

The heirs of James A. Whiteside not being parties to complainants'

bill in any manner, there can be no account as to any rent matter as to any lands in which they may have an interest, as respondent is advised. He is further advised and avers that whatever liens or rights Boyce & Cravens may have upon said lands, or against him, is no concern of complainants, and that said Boyce & Cravens are not necessary nor proper parties to this suit; that their names are used to serve only a stealthy purpose. Respondent admits the notice to pay
68 rents, &c., as charged. Respondent cannot answer, does not know, but leaves it to the Bartow Iron Company, who has been in charge and operating the mines, to answer as to what sections coal has been mined, and whether it has mixed expenditures and receipts to any extent. All improvements and coal-mining property, whether fixtures, machinery, cars, tools, or other personal property at said mines, passed as part of said sale to the Bartow Iron Company. Further answering, respondents would state that such embarrassments as he suffers have been brought about by the unjust litigation against him by complainants, who most persistently seek his ruin. In this suit they have goaded the officer holding the attachment process to make vexatious, harrassing, and ruinous levies upon his individual property, in fact closing up his store at the Etna mines, and doing many things to injure respondent in his business, good name, and credit, when complainants must and do know they have no claims against him in this suit.
69 Respondent admits he has much property, real and personal, and upon which real property there are some equitable liens. He denies he is indebted to insolvency. He admits that complainants and they only have immersed him in heavy and useless litigation in the courts of the country, both State and Federal, and it is true that his condition is better than complainants may hope and fear it is, &c., &c.

It is true said Bartow Iron Company is a corporation solely under and by virtue of the laws of the State of Georgia. It is true respondent is a non-resident, which of itself was sufficient cause for an attachment. As regards the suit of complainants against Badge & Eaton, and its decrees mentioned in the bill, respondent does not admit nor deny the same; but should the same become material to his rights, or should his equities in any manner be affected thereby, he requires strict legal proof in regard thereto.

Upon information and belief he denies that complainants were
70 ever actually put into possession of said Vulcan mines, or any part, or in any interest thereof.

Whatever power the court may have to decree a partition of any lands held by complainants and this respondent as tenants in common or joint owners can be made.

Respondent denies having received any rents from such lands; complainants only have realized rents upon lands of respondent, as will be hereinafter shown. Respondent now having fully answered, would show by cross-bill that respondent is entitled, as owner of the lands, to rents received or should have been received by complainants. He charges that upon the SE. ¼ of sec. 3 there were mined some 3,000 tons, and on the NW. ¼ of sec. 11 some 5,000 tons of coal were mined by Badge & Eaton, as tenants of complainants, Gaskill & wife charging Badge & Eaton one cent per bushel. The deed of Alley to respondent and Agnew will show the lands conveyed, as explained in the answer above. The sale of the lands by Alley was for $7,500. As will be seen from the deed, $3,500 was paid in cash. Alley's vendor's
71 bill was to enforce the payment of the balance on the 10th day

of May, 1867; such lands as were embraced in the bill were sold as explained in the answer above, so arranged four columns as to present the matter clearly. Mrs. Gaskill purchased such as were actually sold upon a bid of $5,350.00, the amount of a pre-existing debt she held against Alley, which was the consideration. A balance due Alley was still left. To pay this he had an execution issued in said cause and levied upon the lands embraced in his said deed and not sold under his bill. Respondent Haselton, on the 2d day of February, 1875, purchased his own lands to pay said balance, building separately upon each tract, the aggregate amount being some $1,200. The lands are described as the NE. & NW. ¼s of sec. 27; and the SE. ¼ of sec. 21; and the ¼ of the NE. ¼ of sec. 2, in the 1st fr. T. and the undivided half interest in the NW. ¼ of the SE. ¼ of sec. 10; and the SE. ¼ of sec. 3, in the 2d fr. T., 6 R. W., B. L. O. D. The sheriff executed a deed, which will be produced whenever required.

72 In January, 1874, respondent, Haselton, purchased of Boyce & Cravens their ⅜ths interest in the NW. & SW. ¼s of sec. 1; SE. ¼, W. ½, & NW. ½ of the NE. ¼ of sec. 2; the SE. ¼ of sec. 3; the NW. & NE. & SE. ¼s sec. 10; & the N. & SE. ¼ of the SW. ¼ of sec. 9, in said 2d fr. T., 6 R., &c., with the right to collect all u'paid rents.

On the 17th day of December, 1874, respondent purchased at chancery sale in the case of W. B. Whiteside & others vs. H. L. Gaskill & others, in chancery, at Chattanooga, the ⅛th interest in James A. Whiteside's estate in the said lands just above described. Respondent also purchased of Boyce & Cravens in January, 1874, with the right to collect all back rents, their ⅜ths undivided interests in the NE. ¼ and NW. ¼ of sec. 11, and the fr. SW. ¼ of sec. 11, being 120 acres; and the SW. ¼ & S. ½ of the NW. ¼ of sec. 3, with other lands unnecessary to be described.

Mrs. Gaskill undertook to lease the Vulcan mines to Badge & Eaton —lease expiring 1st day of June, 1875—failing to describe the particular quarter-sections, or section, comprising the mines, and indefinitely defining her interests as ⅜d or ⅛th, collecting or contracting, and

73 assuming the right to collect 25 cents per ton for her interest, and that she represented as executrix of James A. Whiteside's estate.

On the SE. ¼ of sec. 3 Boyce & Cravens collected of Badge & Eaton their rentals on ⅜ths interests to the 1st January, 1874. Mrs. Gaskill collected the ⅛th for the Whiteside's estates till its sale, as shown on the 17th Dec'r, 1874; and also assumed the right to collect all along till June 1, 1875, the other ⅝ths or ½ interest in said SE. ¼ of sec. 3, which was the property of respondent Haselton, and not hers; and so it is he is entitled to ⅝ths after January 1, 1874, and upon the whole after December 17, 1874.

The proofs will show the amounts or quantities mined. Payments were monthly, and from such times should be computed and allowed.

Aside from the ⅛th interest of the Whiteside estate as shown, Mrs. Gaskill is chargeable with some $7,000 and interest for rents of coal mined from SE. ¼ of sec. 3.

The SW. ¼ of sec. 11 was before respondent purchased of

74 Boyce & Cravens in Jan'y, 1874, embraced in the Etna lease of the Raccoon Mountain property, in which the estate of Whiteside had ¼th interest. Boyce & Cravens collected no rents from this quarter section, from which some 5,000 tons or more were mined. As already charged, respondent is entitled to some $1,000 with interest upon monthly payments, the exact amount to be shown by proof.

It may be that coal was mined from the NE. ¼ of sec. 10, adjoining the SE. ¼ of sec. 3 and NW. ¼ of sec. 11.

Should the fact so apper from the proof, then respondent charges that he is entitled to ⅜ths rentals from January 1, 1874, to Dec'r 17, 1874, and from that day on to one-half. Mr. Gaskill purchased a half interest at the alley sale, May 10, 1867, in 120 acres in the NE. ¼ of sec. 10.

The premises considered, respondent Haselton prays that said V. A. Gaskill and wife, Mrs. H. L. Gaskill, citizens of Hamilton County, Tennessee, be made parties defendants to this cross-bill by service of process requiring them to answer. He prays for a decree against them for all proper rents due him, with interest, and, if necessary, that
75 on account be ordered to ascertain what rents are due and should be paid, and for all such other and further relief he prays your honor as in duty bound he will ever pray, &c.

NASH. H. BURT,
E. M. DODSON,
Sol'rs.

STATE OF TENNESSEE,
Hamilton County:

This day personally appeared before me J. C. Haselton and made oath that the facts stated in the foregoing answer and cross-bill are true to the best of his knowledge, information, and belief.

Sworn to & subscribed before me this 1st Feb'y, 1878.

T. M. McCONNELL, *C. & M.*
☞ J. S. HILL,
D. C. and M., Ch'y Ct., Hamilton Co., Tenn.

I ackowledge myself bound for the costs in this cause.

WILL R. CARLILE.

Witness: N. H. BURT.
FEB. 2, 1877.

(Endorsed:) No. 651. V. A. Gaskill and Wife vs. J. C. Haselton et als. Answer & cross-bill of J. C. Haselton. Filed July 6, 1878.
H. M. AIKEN, *Clk.*

Subpœna to answer.

UNITED STATES OF AMERICA,
Eastern District of Tennessee, ss:

76 The United States of America, to V. A. Gaskill and wife, H. L. Gaskill, greeting:

We command you, and every of you, that you appear before our judge of our circuit court of the United States for the eastern district of Tennessee, at Knoxville, in said district, on the fourth day of March next, that being the rule day to which this writ of subpœna is returnable, to answer the cross-bill of J. C. Haselton, in cause of V. A. Gaskill and Wife, versus J. C. Haselton et. al. pending in said court, this day filed in the clerk's office of said court, in said city of Knoxville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of Tennessee, to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Knoxville, aforesaid, this sixth day February, in the year of Lord one thousand eight hundred and seventy-eight, and of our Independence the 102d.

H. M. AIKEN, *Clerk.*

MEMORANDUM: The above-named defendants are hereby notified that unless they enter their appearance in the clerk's office of said court, at Knoxville, aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

77

H. M. AIKEN, *Clerk.*

(Endorsed:) No. 651. Circuit court United States, eastern district of Tennessee. V. A. Gaskill & Wife vs. J. C. Haselton et al. Chancery subpœna. Returnable to rule day, fourth in March, A. D. 1878. H. M. Aiken, clerk. Issued February 6, A. D. 1878. H. M. Aiken, clerk. Burt & Dodson, compl'ts' sol'rs, Hamilton County.

Came to hand Feb. 13th, 1878; executed by delivery to H. L. Gaskill a copy of cross-bill and copy of summons, and by reading this summons to V. A. Gaskill, all at Chattanooga, Tenn, this Feb. 14, 1878.

F. A. CRUTCHFIELD,
D. U. S. Marshal.

Costs: 112 miles at 6c., $6.72; 2 summons, $4.00; copy of summons, $2.00; copy of bill, $2.00=$11.72.

Demurrer of Boyce & Cravens.

In United States circuit court, at Knoxville, Tenn., transferred from chancery court at Jaspar, Tenn.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON & OTHERS.

78 The demurrer of Robert Cravens & J. P. Boyce in his own right, and as executor of Ber. Boyce, dec'd, to said bill.

The said defendants, by protestation, &c., for cause of demurrer, say:

Code Tenn., § 4386, § 4388. 1. Said bill shows that it is brought against these defendants and other defendants for distinct matters & causes in several whereof they are not interested, & the bill therefore multifarious.

2. Said bill shows that there is no privity between these defendants and said complainants.

3. Said bill does not show that these defendants have any lien upon the land described in the pleadings, or claim any title thereto.

4. It cannot be maintained as a bill for discovery, as the oaths of these defendants are waived, and no relief is prayed against these defendants in said bill.

5. It appears from said bill that the said complainants are not entitled to the reelief prayed in said bill.

TOMLINSON FORT, *Sol'r.*

(Endorsed:) No. . Demurrer. V. A. Gaskill & Wife vs. J. C. Haselton & others. Filed July 11, 1878. H. M. Aiken, clerk.

79 *Petition of Thos. P. Hall.*

Original injunction. Attachment bill No. 519. Rule docket in chancery court of Marian County, Tenn. Transferred & removed to the circuit court of the United States at Knoxville, Tenn.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON, BARTOW IRON CO., ET ALS.

To the honorable the judges presiding & holding the circuit court of the United States, sitting for the eastern district of Tennessee, at Knoxville:

The petition of Thomas P. Hall, a citizen of the State of Tennessee, & residing in the county of Marian, in said district, respectfully shows: That complainants' filed their original bill in said cause in the chancery court of Marian County, Tenn., on or about Aug. 8, 1877, for the objects & purposes therein set forth; thereupon a writ of attachment was issued out of said court and came to the hands of your petitioner, who was then & still is the sheriff of said county of Marian, regularly elected & qualified according to law, and was by him regularly levied, amongst other things upon a stock of goods, wares, & merchan-
80 dise, as will more fully appear by a schedule of the same filed in said chancery court of Marion County as a part of petitioner's return upon said attachment in said cause, and a copy of said schedule is hereto attached as Exhibit A to this petition, but need not be copied.

Petitioner is informed & believes, & thereupon avers, that in the transcript from the said chancery court of Marian County of the original bill, answers, process, orders, & decrees in said cause the clerk and master has failed to make a copy of said schedule, & said transcript is in that respect incomplete.

Petitioner further shows that said goods, wares, & merchandise were at the time of said levy, to wit, Aug. 18th, 1877, in the storehouse in said county of Marian, near the line of the Nashville & Chattanooga R. R. at Etna mines, & at the demand of def't Haselton for the possession of the storeroom then occupied.

Your petitioner being at a loss in the discharge of his duties as said sheriff in the premises, applied to counsel for the compl't & def't, Haselton & Bartow Iron Company for advice as to his duty,
81 and was advised by them, which he treated as instructions & so regarded. He had said goods, wares, & merchandise carefully packed in boxes & removed from said Etna mines to the town of Jaspar, the county seat of Marian County; said removal was necessary for the proper care & protection of said property, there being no other suitable house which could have been procured & which would have been a safe deposit for said goods at said Etna mines which was known to your petitioner. Said removal was made by railroad, which was the safest, cheapest, & best means of transportation of the same, & the same were packed at Etna mines in boxes, carried therefrom to said town of Jaspar, & there stored for safe-keeping in a storehouse suitable for such purposes at a total cost of $95.05, as will more fully appear by a bill of cost of the same hereto attached as Exhibit B, which need not be copied & is made a part hereof. Petitioner is informed, be-
82 lieves, & charges that said bill of cost for said removal has likewise been omitted by said clerk & master in his transcript in said

cause, filed in your honor's court. Petitioner further shows that said goods have, since their said removal, to wit, on or about November 16th, 1877, been continually, & are now, stored in a storehouse in Jaspar, where a reliable man occupies an adjoining room; and your petitioner is satisfied that the same are a' safe, except from fire, as circumstances will admit in the county; & as to fire, the building in which they are stored is of wood, but otherwise as safe as any in the county, & no suitable brick building could be had for that purpose.

Petitioner further shows, that as custodian of said goods he has incurred as expense rent of a portion of said storehouse necessary for that purpose dollars per month since said 16th day of Nov'r, 1877, which has not heretofore been reported in said cause by him & does not appear in said transcript.

83 Petitioner further shows that a large proportion of said goods, although carefully handled & have been stored in a dry & secure warehouse, are expensive & troublesome to take care of & are liable to be destroyed by fire or by theft. Your petitioner is desirous of being relieved from the further custody & control & from liability on account of & responsibility for said stock of goods. Your petitioner is advised & insists, that in view of the removal of said cause to your honor's court, that your honor will, upon his petition, appoint some proper person as custodian for your honor's court to take charge of said goods, wares, & merchandise, & do & perform such orders & decrees of your honor's court as may be granted in the premises to whom your petitioner can deliver said goods, wares, & merchandise, taking his receipt for the same.

The premises considered, your orator prays that V. A. Gaskill & wife, Harriet L. Gaskill, citizens of Hamilton County, Tennessee, compl'ts, whose solicitors of record are Trewhitt & Trewhitt, &

84 V. A. Gaskill, & said def'ts J. C. Haselton & The Bartow Iron Company, who are non-residents of Tennessee, whose solicitors of record are N. H. Burt, & E. M. Dodson, & J. P. Boyce, in his own right & as executor of Ker Boyce, who is a non-resident of Tennessee, & R. Cravens, a citizen of Hamilton County, Tenn., be made parties def'ts to this petition. He prays for all proper process to issue. He prays for an order to appoint a proper custodian by this court to take charge of the goods, wares, & merchandise set forth in said Exhibit A, & that your petitioner be instructed to turn over the same to said custodian, and, if mistaken in his general prayer, he prays for such other further & general relief as will be granted in a court of conscience.

THOS. P. HALL.

C. P. JONES,
Solicitor.

STATE OF TENNESSEE,
Marian County:

Before me, the undersigned, a duly elected & acting justice of the peace in & for said State & county, personally appeared Thos.

85 P. Hall, the petitioner in the foregoing petition, who being by me duly sworn makes oath that the facts stated in his said foregoing petition are true to the best of his knowledge, information, & belief.

THOS. P. HALL.

Sworn to & subscribed before me this 28th day of March, 1878.

W. M. BENNETT, *J. P.*

STATE OF TENNESSEE,
Marian County:

I, J. L. Minter, clerk of the county court of said county, do hereby certify that W. M. Bennett, whose genuine signature appears to the above oath, is a lawfully elected & qualified justice of the peace in & for said county & State, & that all his acts as such are entitled to full faith & credit.

In witness whereof I have hereto set my signature & attached the seal of said court this March 27th, 1878.

[SEAL.] J. L. MINTER, *Clk.*

Clerk fee, 75c.

STATE OF TENNESSEE,
Marian County:

86 I, W. M. Bennett, chairman of the county court of said county, do hereby certify that John L. Minter, whose signature appears to the above authentication as clerk of the county court of said county, is the duly elected clerk of said court, & that said court is a court of record, & that the above attestation is in due form of law.

Witness my hand & seal this the 28th day of March, 1878.

W. M. BENNETT,
Chairman.

We, solicitors for the parties, hereby consent to the filing of this petition in said cause without bond, & waive copy of same & of process upon the same, but reserve all the questions except as to filing the same, this April 5, 1878.

A schedule of property attached in the case of V. A. Gaskill & Wife vs. J. C. Haselton et al.

All the real estate mentioned in attachment: 1 iron safe, 2 desks, 5 mules, 26 incline cars, 20 bank cars, 1 wire rope, 1 coke-charger, 5 coke-forks, 1 set bl'ksmith tools, 12 shovels, 1 iron boiler. (The above
87 personal property is all subject to a deed of trust made to A. C. Eaton, dated July 16th, 1877, and recorded Aug. 10th, 1877.)

1 lot of coke supposed to be about ten thousand bushels, on the coke-yard near the switch at Etna. The above lot of coke is subject to a former attachment in favor of V. A. Gaskill & wife; also the goods, wares, & merchandize in storehouse at Etna, a schedule of which is hereto attached.

Exhibit A to petition.

EXHIBIT A.

ETNA MINES, *Nov.* 7, 1877.

Account of stock taken by S. H. Alexander and S. B. Burnett, dep'tys of T. P. Hall, sheriff of Marian County, Tenn.

DRUGS AND STATIONERY.

1½ dz.	Davies' Arithmetics.	5½ "	McGuffey's High School Reader.
1½ "	First Readers.	½ "	" Fifth " "
4½ "	Montieth Geo's.	1½ "	Webster's Dictionary.
5½ "	Webster's Spellers.		

$2\frac{1}{12}$ " English Grammar.
$4\frac{1}{12}$ " Writing-books.
88 $\frac{1}{2}$ dz. Second Reader.
$1\frac{1}{12}$ " Mitchell's Geo.
$\frac{1}{2}$ gross pencils.
1 great gross penholders.
$7\frac{1}{12}$ doz. slates.
3 " boxes Medallion pens.
3 " bottles ink.
$\frac{1}{2}$ " school slate.
1 ream Oxford cap paper.
$\frac{1}{4}$ " Fool's " "
3 pass-books.
3 bales chalk.
4 lbs. borax.
60 " copperas.
89 12 ozs. syrup squills.
$1\frac{1}{2}$ pts. tobacco flavoring.
23 bottles Specific Harter.
$2\frac{1}{2}$ lbs. muriatic acid.
$\frac{1}{2}$ pt. prickly ash.
4 ozs. lactic acid.
1 lb. corrosive sublimate.
$\frac{1}{2}$ " yellow root.
2 bot's Ayres' Sarsaparilla.
$3\frac{1}{6}$ doz. Godfrey's Cordial.
$4\frac{1}{3}$ " G. & L. Teething Syrup.
4 lbs. alum.
$\frac{1}{2}$ doz. Harter's Cheaps.
3 " summer extract.
90 16 ozs. mercurial ointment.
$\frac{1}{2}$ doz. Mustang Lin.
2 " paregoric.
$1\frac{1}{3}$ " laudanum.
2 bot. paregoric.
5 " syrup squills.
1 " Eureka Compound.
16 ozs. gum kino.
6 grs. chloride gold.
$4\frac{9}{12}$ doz. analine.
$\frac{1}{2}$ " Halway's Oint.
$\frac{1}{12}$ " calomel (220 gr's).
$\frac{1}{2}$ " pills.
240 grs. calomel.
91 $\frac{9}{12}$ doz. sweet oil
$\frac{9}{12}$ doz. sp'ts turpentine.
$\frac{1}{12}$ " castor oil.
1 " McClain Worm Candy.
$2\frac{2}{12}$ " Cook's pills.
$\frac{6}{12}$ " Wright's "
$1\frac{9}{12}$ " McClain "
3 " Sheneck's "
23 boxes Ayres' "
9 " Demville's pills.
22 " Holloway's "
36 " Liver "
42 " Cook's "
23 " Harter's "
12 " " "
23 cakes toilet soap.
2 white jars.
1 box blue mass.
30 lbs. sulphur.
2 gal. alcohol.
1 " turpentine.
1 qt. alcohol.
2 jugs.
4 tin cans.

$3\frac{1}{12}$ " Quackingbush Composition.
$2\frac{1}{12}$ " McG. 3d Reader.
7 " red ochre.
6 " borax.
8 " Paris green.
$1\frac{1}{2}$ " sumac leaves.
$1\frac{1}{2}$ " emery dust.
1 " snake-root.
3 " glue.
2 doz. glass vials.
1 nice castor.
2 lbs. camomeal leaves or buds.
4 " canary seed.
1 " camphor.
2 " composition powders.
3 " powders.
2 " vanilla.
$1\frac{1}{2}$ " peppermint essence.
$1\frac{1}{2}$ " magnesia.
$1\frac{1}{12}$ " willow charcoal.
$1\frac{1}{12}$ bottles No. 1.
$1\frac{1}{2}$ " " " 2.
$1\frac{6}{12}$ " Bateman's Cheap.
$1\frac{9}{12}$ " bul. moss.
$\frac{8}{12}$ " Thomson's eye-water.
480 grs. quinine.
8 bottles sp'ts nitre.
$1\frac{1}{2}$ doz. Mustang Lin.
$\frac{9}{12}$ " Simmons' Liver R.
$11\frac{7}{12}$ " Tripoli soap.
$\frac{9}{12}$ doz. horse powder.
1 pt. ammonia.
20 bottles castor oil.
1 lb. glycerine.
$1\frac{1}{12}$ doz. worm candy.
1 box hair dye.
1 bot. essence lemon.
1 oz. C. acid.
$1\frac{1}{2}$ oz. prussic acid.
$\frac{9}{12}$ doz. Jamaicaginger.
4 bot. Perry Davis' Pain-killer.
$\frac{3}{12}$ doz. bot. sweet oil.
$\frac{1}{12}$ " " "
37 boxes blueing.
9 large bottles.
5 glass jars.
4 small "
8 lbs. Castille soap.
$2\frac{9}{12}$ doz. toilet soap.
$3\frac{1}{12}$ " " "
5 lbs. Castile soap.
6 " Russian soap.
12 " Baker's cocoa.
4 " pumicestone.
9 " alum.
6 " salts.
1 bottle juniper.
1 pt. " prickly ash.
$\frac{1}{2}$ " blood root.
$\frac{1}{2}$ pt. golden seal.
1 qt. acetic acid.
1 lb. lobelia.
2 " vera vera.
1 " St. C. Ointment.
1 " borax.
1 " red paint.
6 " empty bottles.

GROCERIES.

1 doz. boxes codfish.
21 cans squash.
19 cans peaches.
16 " claimes.
92 2 bot. Wor. Sauce.
26 cans beans.
13 " corn.
15 " concentrated lye.
1 " lobsters.
9 boxes table salt.
3 " sardines.
12 " Baker's cocoa.
5 " sea-moss.
10 " gelatine.
9 papers chocolate.
18 lbs. com. starch.
2 " canary seed.
25 papers ginger.
22 boxes G D. caps.
17 " W. P. caps.
1½ " sage.
3 1/12 lbs. tapioca.
1½ " bl'k tea.
25 cases sage & mustard.
15 boxes baking powder.
19 " stove polish.
1¼ " cloves.
3⅓ doz. Cayenne pepper.
1 mouse-trap.
20 lbs. maccaroni.
15 " citron.
1 bot. brandy peaches.
93 58 lbs. G. sugar.
4 " "
1 " peaches.
8 " pears.
3 whitewash brushes.
8 shoe brushes.
53 lbs. C. C. sugar.
200 lbs. rice.
3 " bar soap.
2½ " citron.
20 " fine-cut tobacco.
131 " fancy crackers.
6½ " figs.
½ " nutmegs.
¼ " mace.
110 " tobacco.
5½ doz shoe-blacking.
1 box salt.
5 lbs. tobacco.
77 " stick candy.
40½ " starch.
115 " cracked wheat.
16 " tapioca.
13 " maple sugar.
5 candy jars.
7½ lbs. washing soda.
2 doz. gun tubes.
6 lbs. beeswax.
2 " madder.
48½ " burner-twist.
37 " bl'k tea.
2 doz. yeast powder.

QUEENSWARE.

1 potato dish.
3 " "
8 platters.
15 pitchers water ash.
11 cream pitchers.
6 " "
4 lantern-globes.
15 lamp-chimneys.
9 molasses pitchers.
6 " "
21 sugar-bowls.
7 sets W. G. plates.
45⅙ " " "
2⅙ " " "
2½ " " "
9 1/12 " " teas.
1 bowl & pitcher.
1 lamp-shade.
2 salt sets.
1 pepper box.
1 box Look butts and screws.
6 col. chamber pots.
9 white " "
1 doz. glass fruit-cans.
8 y'ds dress facing.
2 y'ds buff chamley.
5 doz. Turk. red h'k'fs.

HARDWARE.

1 box saw-handles, hardware, &c.
2 augur h'dl's.
14 p. butts.
88 sheets sand-paper.
16 " emory "
8 sets door-springs.
40¼ lbs. shot.
8 shovel handles.
5½ doz. strap hinges.
11 padlocks, hinges, &c.
11 lbs. bar lead.
14 sets ⅛ bed-castors.
2 augurs.
1 drawing-knife.
9 gun-locks.
4 mill-files.
4 rat-tail files.
21 saw "
15 doz. lamp-wicks.
2 door bolts.
6 lamp-burners.
2 whetstones.
1 mill-file.
5 lbs. horseshoe nails.
9 miner's lamps.
50 ft. fuse.
11 shaving brushes.
1 emery strap.

2 gimlets.
4½ doz. paper tacks.
1 box cartridges.
½ " pegging aw'ls.
½ doz. scissors.
11 candle holders.
1 1/12 doz. brass hinges.
80 coffin screws.
3 1/12 doz. German-silver spoons.
2 1/12 " spoons.
2½ sets k. & forks.
3 padlocks.
3 coffin screws.
6 J. P. Toney razors.
9 W. & B. razors.
2 p'r shears.
80 coffin screws.
8 p'r scissors.
5 awl handles.
1½ doz. raz. straps.
½ gr. hat hooks.
11 gun cylinders.
1 doz. shaving-brushes.
½ gr. blind hooks.
2 coffin handles.
2 Ruse locks.
33 coffin screws.
2 padlocks.
8 forks.
11 lbs. rifle powder.
1 doz. axe handles.
50 f't glass, 10x12.
2 axe handles.
1 p'k shoe-pegs.
3 W. & B. razors.
8 set bed-castors.
20 lamp-chimneys.
4½ doz. wicks.
100 f't fuse.
10 mill files.

TINWARE.

31 tin parts, ast. sizes.
½ doz. dinner buckets.
32 coffee-pots.
20 oil-cans.
23 wahs-basins.
95 26 candlesticks.
1 pt. oil can.
8 tin pepper-boxes.
9 nutmeg-graters.
1 corn-popper.
2 brooms.
6 fire-pokers.
1 p'r tongs.
5 lanterns & globes.
2 churn handles.
3 dish pans.
27 pie-plates.
54 oil-cans.
66 small pie pans.
7 meat-cutters.
9 strainers.
49 lamp-chimneys.
6 brass lamps.
2 glass "
3 cow bells.
2 tin cups.
21 " bucket.
1 fly-trap.
1 doz. muffin-rings.

BOOTS & SHOES.

26 p'r men's & b. c'lf pegged shoes.
6 " " kip " "
8 misses' c'lf " "
24 " pebble grain " "
21 " child's c'lf " "
19 " boys' " " "
42 " children kid.
15 p'r button kid shoes.
8 " child's copper tip "
14 " men's buckle Alex."
2 " calf 1 box lot.
10 " plow shoes, men's.
38 " boys' brog's.
64 " men's "
35 " " single sole br'gs.
6 " " hob nail.
1 " " slippers.
1 " " gent's c'lf boots.
500 leather shoe-strings.
7 p'r boots, kip.
3 " " c'lf.
3 " " sewed.
9 " boy's kip pegged.
9 " men's c'lf "
8 " " " "
10 " " " boots.
9 " " kip "
24 " " Bing's shoes.
12 " " "
36 " wom'n's kip polka.
36 " " beef.

DRY GOODS.

2 blue dinner shirts.
96 1 rubb. blanket.
1 " coat.
1 doz. negligee shirts, 440.
1 " " " 297.
8½ " " " 149.
9½ " " 212.
1 " " 515.
6 pool "
3 p'r rubb. leggings.
14 American shirsts (white).
2 writing-desks.
4 portfolios.
14 sheets cal. wadding.
1 doz. ladies' overskirts.
4 boxes h'k'fs.
26 " ladies.
41 p'r suspenders, men's & boys'.

2 W. P. "
11 red flannel "
6 " " "
5 velvet breast "
11 embroidered "
1 doz. No. 522 "
1 check flannel "
3 neglia "
6 blue rib "
81 morino "
7 wool rib "
12 red flannel "
18 ladies' vests "
10 white quilts.
6 ladies' linen suits.
1 overskirt.
1 " "
17 Cardigian jackets.
7 white morino.
36 Metropolitan shirts (white).
97 52 y'ds col. lace.
3 doz. ladies' white cot. hose.
5½ " " col. "
12 " "
2 " ladies' hose.
4 " gent's " (British).
3 " " " cot. rib.
19 p'r child's cot. hose.
4 " " merr. "
8 " " wool rib.
39 papers pins.
3 boxes bl'k pins.
252 y'ds supetein braid.
58 " cot. tape.
16 men's wools coats.
5 " cot. "
3 " W. P. "
5 " linen "
1 " black alpaca coat.
8 boys' wool coat.
10 gent's cot. "
9 men's cot. vests.
1 " wool "
1 " linen "
3 p'r men's cas. pants.
1 " " black cas. pants.
3 " " cotton "
1 boys' wool hat.
98 8½ y'ds white robbon.
120 " tape "
80 " fancy "
27 " jeans.
26 " "
7 p'r women's white hose.
3½ doz child's col. "
3 p'r " mittens.
12 " gent's fancy col. hose.
8 " morino "
2 " blue "
4 " boys' blue wool "
3 doz. misses "
19 p'r striped "
23 " gent's linen shirt bosoms.
10 " " cotton "
2 " child's hose.
1 cotton shirt.
13 p'r gent's wool gloves.
6 " buff mittens.
4 " dogskin mittens.
24 " buck gloves.
9 lb. linen thread.
70 spools silk "
180 papers hair-pins.
177 violin strings.
3 p'r gloves, l. t.
4 tobacco pouches.
7 tin spectacle-cases.
12 leather " "
1 p'r spectacles.
64 y'ds belt ribbons.
72 " white cotton lace.
93 " tape trimming.
141 " cotton etching.
80 " cotton lace.
9 " bl'k coffin trimming.
12 p'c's velvet ribbon.
5 y'ds velvet ribbon.
86 p'c's wor. braid.
160 y'ds rubber cord.
36 " blue lace.
10 men's wool hat.
10 " " " assorted.
1 boy's hat.
5 glaze caps.
9 plush caps.
1 p'r buck gloves.
5 " dog "
4 " buck "
1½ gros. thimbles.
9½ " "
3 doz. white wax.
4 p'r child's morino.
12 doz. steel buttons.
1½ doz. horn "
15 doz. " "
20 " white pearl "
1 gro. pant. buckles.
23 doz. brass buttons.
½ " bottles cologne.
9 " brass buttons.
3 gro. hooks & eyes.
14 p'r buck mittens.
17 balls welting cord.
5 p'r ladies' white gloves.
6 " gents' knit "
23½ doz. fish lines.
13 y'ds belt ribbon.
55 " fancy "
13 woman's hoods.
5 p'r " state corsets.
4 " " bridal "
3 " kid gloves.
43 y'ds bleached Arosk. drills.
258 " Great Falls E. cotton.
93¼ " pepperer "
357¼ " Atlantic " "
147 " Augusta "
44 " Ausenburg.
79½ " Arsk. drills.
30 " Summerset cant. flannel.
3¼ " sheeting.
45 " Arsk. tick.
50 " Thorndike "
10¼ " " "
15 " Turkey red damask.
19¼ " loomed table linen.
22½ " bleached line damask.
14 " Heark. towels.
53 "
4½ y'ds unbleached linen.

11 " white cotton gloves.
12 " ladies' button gloves.
6 " gent's " "
7 " sheepskin " "
1 " buck " "
12 " mittens.
99 17 bleached linen covers.
11⅔ y'ds crash.
14 infant socks.
50 y'ds dinimime.
4¼ " st'p'd "
20 white linsay.
6 " velvetine.
6 umbrellas.
3½ lbs. cotton knitting.
6 " working cotton.
5 gro. shoe-strings.
3 y'ds blue W. P. goods.
2 " white flannel.
15½ " dotted "
41 " blue mix. "
15 " black & white check flannel.
52¾ " poplin.
87½ " blue mixed flannel.
18¾ " " " "
227 boxes paper collars.
2 doz. linen.
56½ y'ds striped poplin.
45 " green surge.
133 " brown poplin.
42½ " drab "
58 " O. C. M. suiting.
49½ " black coat-binding.
54 " Zaumkeg satin.
100 382 y'ds cambric.
29 " blue roll.
5 " red " "
12½ " tycoon rep.
6 " waive plaid.
12½ " red & white.
22¾ " cotton plaid.
18 " " "
29¾ " striped poplin.
54 " check "
58 " O. C. M. suiting.
48 " red alpaca.
48 " black "
50 " blue "
9 chil. caps, knit.
1 ladies' parasol.
26 " hats.
11 briar-wood pipes.
3 me'rschaum "
24 pipes.
14 y'ds black lace.
9 hair-brushes.
6 silk s't'k'f.
8 hammocies.
7 "
46 gent's bows.
15 y'ds blue berage.
15 " brown "
101 10 doz. watch-keys.
1 " " "
14 ladies' belts.
99 p'r gent's rib hose.
1 " " cut "
5 ladies' white skirts.
6¾ y'ds skirting.
1 ladies' white skirt.
27 " cotton checks.
3 woollen table covers.
1 white quilt.
3 colored "
3 Turkey red table covers.
15 brown linen "
51 y'd brown satin.
23 y'ds black velvetine.
31 " sertine lace.
68 " cumb. linsay.
35 " adr't "
41 " " "
23 " " "
68 " Cumberland "
46 " adr't "
49½ " Orinoko "
11¼ " White Rock "
62 " " " "
52 " red & blue alpaca.
499 " calico.
12 " "
19½ " blue & green calico.
204½ " cambrick.
125 " American gingham.
52¾ " blue & green flask.
136 " solid colored calico.
23 " cotton blue & green pla'ds.
3 " buff cambrick.
40 " linsay.
52 " striped poplin.
24 " knickerbocker.
4¼ " blue alpaca.
12 " brown silicia.
20 " drab silicia.
13 bl'k neckties.
9 fancy "
8 ladies' ties.
11 boxes lily white.
11 p'r ladies' suspenders.
9 steel belts.
6 sleeve-holders.
9 steel garters.
11 ladies' linen collars.
35 lbs. bees' wax.
3 doz. gent's scarf-pins.
2 " ladies' breast "
1 " key-rings.
32 gent's watch-chains.
11 collar-buttons.
25 sets gent's studs.
15 " sleeve-buttons.
6 ivory buttons.
7 ear-drops.
2 " " & pins.
14 " " "
8 watch-chains.
2 gent's pins.
16 ladies' pocket-books.
3½ doz. book-covers.
10½ " fine "
3¼ " common "
1 " round "
13¼ " Swiss m.
10 *Lankny* glasses.
16 cloaks.
30 spools twine thread.
7 fancy boxes.
128 jew's-harps.
4 willow baskets.
53 neck-bows.

26	y'ds Japanese poplin.	195	doz. spool thread.
1¾	" *y'ds* cot. luce.	12	y'ds B twine.
21	striped poplin.	125	doz. agate buttons.
61	y'ds Jap. "	132	" pearl agate.
31	" white brilliant.	12	" best pearl.
13¾	" " "	1	box odd buttons.
2	" " Swiss mus.	22	doz. silk "
2	" velvetine lawn.	1	blue shawl.
7½	" check nansook.	2	y'ds blue tube cover.
12	" white lustre.	2	" " "
¾	" Swiss muslin.	25	" check plaid.
14	" jackonett.		

"B" EXHIBIT.

Bill of expenses, moving boxes, hauling, shipping, & storing the Etna stock of goods.

S. B. Burnett	$15 00
S. H. Alexander	15 00
John Milligan	15 00
W. H. Williams (hauling	4 00
W. B. Mitchell (boxes)	6 00
Wm. Hale "	1 50
D. C. Kelly	1 75
C. C. Doyle	75
Mast. Massie	75
Herry Higden	75
C. H. Vaun (freight)	22 55

102 EXHIBIT "B"—continued.

Storage at Jaspar	$8 00
T. P. Hall	4 00
	$95 05

(Endorsed:) No. 651. Petition of T. P. Hall, V. A. Gaskill & Wife vs. J. C. Haselton & others. Filed July 12, 1878. H. M. Aiken, clerk.

Caption of U. S. court.

Be it remembered that at a circuit court of the United States began and held for the eastern district of Tennessee, at the Federal court-room, in the city of Knoxville, within said district and the sixth circuit, upon the second Monday, it being the 8th day of July, A. D. 1878,

Present and presiding the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit.

SATURDAY MORNING, *July* 13, 1878.

Court met pursuant to adjournment.

Present and presiding the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit, and the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

103 *Proceedings in Federal court.*

V. A. GASKILL & WIFE *vs.* J. C. HASELTON & OTHERS. } In equity No. 651. Transferred from Marian Co., Tenn.

Be it remembered that this cause came on to be regularly heard be-

fore the honorable John Baxter and Connally F. Trigg, judges presiding, on this the 13th day of July, 1878, on the petition of Thomas P. Hall, sheriff of Marian County, Tennessee, filed in this cause during the present term of this court, and the same being argued by counsel for the parties and fully understood, the court orders, adjudges, and decrees that said petition is regularly filed and the petitioner entitled to the relief sought, and that said Thomas P. Hall, upon the execution of a bond in the sum of four thousand dollars, with good security to be approved by the clerk, be and is hereby appointed a receiver of this court to hold possession of, take charge, care, custody, and control of the goods, wares, merchandise heretofore attached in said cause and now in his custody as sheriff of said county of Marian, in the State of
104 Tennessee, and he will hold the same subject to the further order and decree of this court in this cause.

This cause coming on to be further heard on the causes of demurrer of the defendants, Robert Cravens, J. P. Boyce, in his own right and as the executor of Ker Boyce, deceased, and the same being argued, the court is of the opinion that said demurrer is well taken, and the same is sustained; it is therefore ordered, adjudged, and decreed that said bill be dismissed as to said defendants, and that said defendants recover of said complainants and of James Roop, security on the prosecution bond, all the costs of said cause incident to making them parties to said bill, and that each of said defendants recover of said complainants and of James Roop, their security on prosecution bond, full costs and fees of their solicitor in sustaining said demurrer. All other questions not herein and heretofore passed on are reserved.

105 *Proceedings in U. S. court.*

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS. } In equity. No. 651.

The demurrer of the defendant the Bartow Iron Co. coming on to be heard, and it appearing to the court that the same is well taken, the same is sustained, and complainants' bill so far as said defendant is sought to be held to account for minerals taken from the Raccoon Mountain property in the bill maintained, and as prays for discovery as to said property, is dismissed.

And the pleas of the Bartow Iron Co. having been set down for argument, for the purpose of facilitating the final hearing of the cause, the counsel of the defendants agreeing thereto, the court is pleased to order and decree that said pleas may and shall be treated and relied upon as a part of the defendant's answer upon the merits of the case.

SATURDAY MORNING, *July* 27, 1878.

Court met pursuant to adjournment.

Present and presiding, the honorable John Baxter, judge of
106 the United States circuit court for the sixth judicial circuit.

Proceedings in the U. S. court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS. } In equity. No. 651.

The demurrer of V. A. Gaskill and H. L. Gaskill, his wife, to the answer and cross-bill of J. C. Haselton, filed as a cross-bill in this case,

coming on for argument, was heard and duly considered by the court; and the court being of the opinion that under the rules prescribed for and prevailing in this court def'ts have no right to file their answer as cross-bill, and doth therefore sustain the demurrer aforesaid, and dismisses said answer in so far as it is made a cross-bill; and the court doth further decree that said V. A. Gaskill and H. L. Gaskill, his wife, have and recover from the said J. C. Haselton and Will. R. Haselton his security for the prosecution of said cross-bill, their costs to be taxed, for which an execution is awarded.

Petition of V. A. Gaskill & wife.

V. A. GASKILL & WIFE, HARRIET L. GASKILL,
vs.
J. C. HASELTON, BARTOW IRON CO., ET ALS.

Circuit court of the United States for the eastern district of Tennessee, at Knoxville, in the circuit.

To the judges of the circuit court of the United States for the eastern district of Tennessee, at Knoxville, in the circuit:

Your petitioners, V. A. Gaskill & wife, Harriet L., respectfully state and show the court that they filed their bill in the above-entitled cause in the chancery court of Marian County, Tennessee, about the day of August, 1877, for the objects & purposes as set forth in their bill. A writ of attachment under the prayer of their bill was issued out of said chancery court & was levied by the sheriff of said county upon certain property of def't Haselton. On the petition of def't Haselton & others, the cause was removed from said chancery court to this court, where the same is still pending & undetermined. Thos. P. Hall, who was then a citizen and sheriff of said county of Marian, levied the said writ of attachment among other things upon the stock of goods,
108 wares, & merchandise, as the property of def't Haselton, and the said sheriff took the same into possession, the def't Haselton failing to replevy the same. Said goods were then and still are in said county of Marian, in the possession of said Hall, whose term of office as sheriff of said county has expired. Petitioners further state and show that said Hall filed his petition in said cause (sworn to by him) in July of last term of this court, setting forth the fact of said attachment and levy, together with a description of the goods, together with a schedule of the same, exhibited with his petition. In that petition he shows that expenses have already been incurred in taking care of said goods & that their care will still add to the expense, & showing facts and circumstances as to the nature and character of the goods, expense of keeping, &c., which induce the petitioners to believe that a receiver should be appointed by this honorable court, with full power to sell and dispose of said goods & chattels on such terms, &c., as this court
109 may order. Petitioners state and show that said Hall at last term was appointed receiver of said goods, &c., but was not clothed with power to sell the same.

Petitioners do not know whether said Hall has given bond as said receiver or not, & therefore cannot now say whether he holds said goods as receiver or under his levy as aforesaid. Petitioners here refer to and adopt as part of this petition the aforesaid petition of Thos. P. Hall, together with the Exhibit A, or schedule of said goods thereto at-

tached, but the same need not be copied. Upon an inspection of said schedule of goods, &c., the court will see what part thereof is liable to perish or deteriorate in value. Petitioners allege that in view of their nature & the facts of expense, &c., set forth in said Hall's petition, it makes a case for the interposition of this court, to appoint a receiver with full power to sell the goods mentioned in said schedule. Petitioners allege, from information & belief, that the def'ts to the
110 original injunction & attachment bill still have the same citizenship and residence which they had at the filing of the bill.

The complainants are still citizens of Hamilton County, Tennessee; on the demurrer of def'ts Boyce & Cravens, the bill was dismissed as to them at the last term. Petitioners are informed that def't Haselton, while not a citizen of Hamilton County, is frequently at Chattanooga, Hamilton County, Tenn. They are also informed, however, that N. H. Burt, esq., a citizen of said city of Chattanooga, is of counsel for def't Haselton, & that notice of this application can reach Haselton through him.

Petitioners pray that they be allowed to file this as their petition in said cause for the appointment of a receiver, &c.; that the def'ts to the original bill be made def'ts to this petition, except said Boyce & Cravens; that def't Haselton, or his said counsel, N. H. Burt, be served with office copy & notice of this application. Petitioners pray that the court fix such time & place as may seem proper for the hearing of this petition, & that notice thereof by order of this court be is-
111 sued to the parties accordingly. They pray that an order be made empowering said Hall to sell said goods as receiver on such terms as the court may order, on said Hall giving such bond & security as the court may direct; in case of said Hall declining to act, or failing to act, the court will appoint some other suitable person as such receiver, under proper bonds, &c.

The petitioners pray for general relief.

V. A. GASKILL, &c.

DE WITT & SHEPHERD
v.
V. A. GASKILL, PETITIONERS.

UNITED STATES OF AMERICA,
Eastern District of Tenn., ss:

V. A. Gaskill, being duly sworn, deposes & says that he is one of the petitioners in the foregoing petition named, & has read the same & knows the contents thereof; that the said petition is true of his own knowledge, except as to those matters which are therein stated to be on information and belief, & as to those he believes it to be true.

V. A. GASKILL.

Sworn to & subscribed before 6th Sept., 1878.
R. M. BARTON, JR., *U. S. Com'r.*

112 (Endorsed:) No. 651. U. S. C. C. at Knoxville. V. A. Gaskill & wife, Harriet L. Gaskill, vs. J. C. Haselton et als. Filed Sept. 17, 1878. A. R. Humes, clerk, &c.

To save expense J. C. Haselton waives any notice & service and copy

hereof. He in no manner joins in the application for any disposition of the property attached.

J. C. HASELTON,
By N. H. BURT, *Attorney.*
BARTOW IRON CO.,
By N. H. BURT, *Att'y.*

SEPT. 6, 1878.

Bond of Thos. P. Hall, rec'r.

In U. S. circuit court at Knoxville, Tenn., transferred from chancery court at Marian County, Tenn.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

Know all men by these presents that we, Thos. P. Hall, of Marian County, in the State of Tenn., as principal, and William Hall & J. H. Hogue, of Marian County, of said State, and , of County, of said State, and , of said county & State, as sureties, are held and firmly bound unto Henry M. Aiken, of the county of Knox, in said State, clerk of the circuit court of the U. S. for
113 the eastern district of Tennessee, and his successors in office, in the sum of four thousand ($4,000.00) dollars lawful money of the U. S. of America, to be paid to the said Henry M. Aiken, clerk as aforesaid, and his successors in office, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors, & administrators, firmly by these presents. Sealed with our seals, dated the 13th day of July, 1878.

Whereas a suit was brought on or about the day of , in the chancery court of Marian County, Tenn., by the said V. A. Gaskill & wife vs. the said J. C. Haselton & others, & thereafter was removed to the said circuit court of the U. S. for the eastern dist. of Tenn., in circuit, under the act of Congress approved July 27, 1866, entitled "An act for the removal of certain cases from the State courts;" said cause is still pending in said circuit court for trial; and whereas the said Tho's P. Hall has filed his petition in said circuit court setting forth, amongst other things, that before the removal of said cause from
114 said State court that he, as sheriff of said county of Marian, in obedience to a writ of attachment issued from said chancery court in said cause, levied upon certain goods, wares & merchandise, as the property of said J. C. Haselton, an inventory of which was attached to said petition, further alleging that said property was perishable & expensive to keep, praying among other things that said court, by its orders & decrees, release him as such sheriff from further & other liabilities on account of said goods, wares, & merchandise; and whereas, at the present term of said U. S. circuit court now in session, said petition coming on to be regularly heard, it was decreed by said court that upon the execution of a bond as such in the sum of four thousand dollars ($4,000.00), conditioned as required by law in that regard, with good security, payable to the clerk of said court, that said Thos. P. Hall be appointed a receiver of said U. S. circuit court for the eastern dist. of Tenn., authorized, empowered, and required as such to take
115 charge of, custody, & control of the said goods, wares, and merchandise, preserve and hold the same subject to such future

orders, judgments, & decrees of said U. S. circuit court as may be made in that regard:

Now, therefore, if the said Thos. P. Hall, or his legal representatives, shall take such care & exercise such lawful custody & control of the aforesaid goods, wares, & merchandise, as the receiver of the said U. S. circuit court for the eastern dist. of Tenn., as is required by law of receivers of said court, and shall do and perform all such further orders and decrees of said court as may be made in said cause touching the same, then and in that event the above obligation shall be void; otherwise to remain in full force & effect.

THOS. P. HALL. [SEAL.]
WM. HALL. [SEAL.]
J. H. HOGE. [SEAL.]

Attest:
JAMES I. HALL.
WM. THORNTON.
D. O. KELLY.

STATE OF TENNESSEE,
Marian County, ss:

The sureties in the foregoing obligation named, being duly
116 sworn, depose & say that they are residents of the State of Tennessee & county of Marian, & householders therein, and are worth the sum of four thousand dollars over all their just debts and liabilities, and exclusive of property exempt by law from execution.

J. A. WALKER,
C. & M., Chancery Court, Jaspar, Tenn.

STATE OF TENNESSEE,
Marian County, ss:

I certify that on this 26th of August, 1878, before me personally appeared Thos. P. Hall, J. H. Hoge, & William Hall, to me known & with whom I am personally acquainted to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed, and for the uses and purposes therein mentioned.

J. A. WALKER,
C. & M., Chancery Court, Jaspar, Tenn.

STATE OF TENNESSEE,
Marian County:

117 Personally appeared before me, John L. Minter, clerk of said county, Thomas P. Hall, Wm. Hall, and J. H. Hoge, the within-named persons, with whom I am personally acquainted, and who acknowledged that they executed the within bond for the purposes therein contained.

Witness John L. Minter, clerk of said court, at office, this 14th day of September, A. D. 1878.

[SEAL.]

JOHN L. MINTER.
Clerk of Marian County Court.

Co. clerk fee 50 c.

(Endorsed:) No. 651. Bond of T. P. Hall, receiver. V. A. Gaskill & wife vs. J. C. Haselton & others. Filed Nov. 27th, 1878. A. R. Humes, clerk.

Replication of V. A. Gaskill & wife to Bartow Iron Co.

Circuit court of the United States for the eastern district of Tennessee.

V. A. GASKILL & WIFE, H. L. GASKILL,
vs.
J. C. HASELTON & THE BARTOW IRON CO. } No. 651. Replication.

The replication of V. A. Gaskill & wife, H. L. Gaskill, complainants, to the answer of the Bartow Iron Company, defendant.

These repliants, saving and reserving unto themselves, now and
118 at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

WM. M. BAXTER.
V. A. GASKILL.

DE WITT & SHEPHERD,
Comp'ts' Sol'rs.

119 (Endorsed:) No. 651. Gaskill & wife, H. L. Gaskill, vs. J. C. Haselton et al. Replication. Filed Dec. 24, 1878. A. R. Humes, clerk.

Replication of Gaskill & wife to J. C. Haselton.

In the circuit court of the United States for the eastern district of Tennessee.

V. A. GASKILL & WIFE, HARRIET L. GASKILL,
vs.
J. C. HASELTON ET ALS. } No. 651.

The replication of V. A. Gaskill & wife, Harriet L. Gaskill, complainants, to the separate answer of J. C. Haselton, respondent, so far as the same is or may be regarded an answer, & no further or otherwise.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said
120 respondent is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained (except such facts charged

by way of making said answer a cross-bill) material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

DEWITT & SHEPHERD,
WM. M. BAXTER, &
V. A. GASKILL, *Sol'rs.*

(Endorsed:) No. 651. V. A. Gaskill & Wife vs. J. C. Haselton et als. Replication to answer of J. C. Haselton. Filed Dec. 24th, 1878. A. R. Humes, U. S. cir. ct. cl'k. DeWitt & Shepherd, W. M. Baxter, & V. A. Gaskill, sol'rs.

121 *Caption of U. S. court.*

Be it remembered that at a circuit court of the United States began and held for the eastern district of Tennessee, at the Federal court-rooms, in the city of Knoxville, within said district, and the sixth circuit, on the second Monday, it being the 13th day of January, A. D. 1879,

Present and presiding, the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit.

TUESDAY MORNING, *January 21st*, 1879.

Court met pursuant to adjournment.

Present and presiding, the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit.

Proceedings in U. S. court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET AL. } Bill in equity. No. 651.

This case is continued until the next term of this court in consequence of the absence of counsel.

MONDAY MORNING, *February 24th*, 1879.

Court met pursuant to adjournment.

Present and presiding, the Connally F. Trigg, judge of
122 the United States district court for the districts of Tennessee.

Proceedings in U. S. court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET AL. } In equity. No. 651.

In this cause upon application of complainants V. A. Gaskill & wife, and sufficient reasons appearing therefor, it is ordered by the court that Thos. P. Hall, the receiver in this cause, be and is hereby authorized, after advertising the time and place of sale for ten days in one or two newspapers, to sell at public sale the goods, wares, and merchandise attached in this cause and now in his custody, and may remove said

goods to Chattanooga, Tennessee, for that purpose, if, in his judgment, it will be to the best interests of the parties so to do.

In making said sale, he shall sell for cash on all sales for sums aggregating ten dollars or under. For all other sums he shall take notes due at six months from the date of sale with good personal security, and make his report thereof to the next regular term of this court after said sale.

123 *Notice to take depositions of Eaton & Pillsbury & others.*

In United States circuit court, at Knoxville. Cause removed from Jaspar chancery court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

Complainants are notified that, on the 10th day of January, 1879, at the law office of Messrs. Barton & Son, in Chattanooga, the defendants will take the depositions of David B. Pillsbury, Joseph Watson, C. P. Beddau, A. C. Eaton, F. H. Eaton, J. C. Haselton, James Roope, John Milligan, John Badge, F. J. Stine, and William Hall, and to continue from day to day till completed, to be read as evidence in their behalf in the above-named cause.

J. C. HASELTON.
BARTOW IRON COMPANY,
By DODSON & BURT, *Sol'rs.*

(Endorsed:) V. A. Gaskill & Wife vs. J. C. Haselton et als. Notice.

Executed by delivering a copy of this notice to V. A. Gaskill, this the 4th day of January, 1879.

N. H. BURT.

EASTERN DISTRICT OF TENNESSEE:

At Chattanooga, in said district, this 10th day of Jan'y, 1879, personally appeared before me N. H. Burt, esq., who makes
124 oath in due form of law that he executed & served this notice as set forth in his return hereon endorsed.

N. H. BURT.

Sworn to & subscribed before me this Jan'y 10, '79.

R. M. BARTON, JR.,
U. S. Com'r.

Deposition of A. C. Eaton.

In United States circuit court, at Knoxville. Cause removed from Jaspar chancery court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

In pursuance of notice hereto attached, at the time and place therein specified, I have this day proceeded to take the depositions of the parties therein named.

A. C. EATON, being the first witness, deposeth as follows:

Quest. 1 (by def'ts). State what connection you had with the Vulcan mines, when and for what term of years, and from whom any such connection was derived.

Ans. Jno. Badge & E. G. Eaton started the Vulcan mines, in the spring of 1867, under an agreement made by Jno. Badge with J. C. Haselton & Robt. Cravens. I became an equal partner with Jno.
125 Badge & E. G. Eaton soon after & before we had sold any coal. The firm was then composed of Jno. Badge, E. G. Eaton, & myself about the last of Dec., 1867. The sheriff of Marian Co. put Mrs. H. L. Whiteside (now Mrs. Gaskill) in possession through her ag't, Mr. J. L. McMillen, and we held under her until June 1, 1870, when we made a lease with Mrs. H. L. Gaskill, then Mrs. Whiteside, for five years with the privilege of ten years. We continued to hold the property under Mrs. Whiteside until she commenced suit against us in the chancery court of Hamilton Co., Tenn.; that suit was commenced on 5th Dec., 1874, for rents. We declined to pay rents, because we had ascertained, by survey & enquiries, that it was doubtful whether Mrs. Whiteside really owned the land upon which the mines were situated. We had been notified by Mr. Haselton of the fact that he claimed the land, but we paid no attention to it, relying upon the solvency of Mrs. Whiteside to protect us, & did not know the real boundaries
126 until a survey was made by Wm. Hall, June, 1874.

Quest. Why did you make the lease of June, 1870? What impelled you, if anything, to this? Have you a copy of the lease? Or can you find the lease in the papers of Gaskill & Wife vs. Badge & Eaton? If so, please copy it.

Ans. When we entered upon the land of Vulcan mines, there was nothing but a wilderness. We built inclined tramways, shutes, house, &c., to enable us to mine & ship coal. About the time we made the lease we were informed that Mrs. Whiteside was about to sell or lease the property to others, and not wishing to sacrifice the property we had improved we made the lease. The original I find in the papers of the suit in chancery court of Hamilton Co., & copy same below:

We, Harriet L. Whiteside for herself and as executrix of James A. Whiteside, dec'd, of the first part, and John Badge and Albert C. Eaton of the second part, have this day made and entered into
127 the following agreement; that is to say, the party of the first part leases to the party of the second part for the period of five years from and after the 1st day of June, 1870, with the privilege of ten (10) years from said date on the same terms her interest in the section of land now occupied by the party of the second part, and upon which the coal mines known as the "Vulcan mines" are situated in Marian County, Tennessee, the interest of the party of the first part in said section of land being an undivided interest of one-half in the whole section and an interest of one-third or one-fourth in the other undivided interests of one-half.

The party of the second part accepts this lease only for the purpose of mining coal in and upon said land, with the rights, privileges, and immunities necessary and incident to mining; transporting, and vending coal in and over said land, with the use of all timber and other material upon said section, and the quarter sections of land
128 immediately adjoining, owned by the party of the first part, which may be necessary and required for the proper improvement and development of said coal mines, or for erecting buildings, tramways, tracks, or other works about said mines; or for dwelling, out-houses,

and firewood for the owner, lessee, or operatives of said mines, but no timber or material other than coal is to be removed from said lands. The party of the second part bind themselves to mine for coal upon said lands in a proper and mining-like manner, and secure and maintain the mines & openings or entrances to the same in such a manner as is customary and proper in the best-worked mines, and bind themselves to do no injury to the lands, except such as may be necessary to its proper use and enjoyment for the purpose of mining and vending coal thereon. The party of the second part bind themselves to pay all taxes that are or may be assessed upon
129 said land during the term of this lease, and to pay the party of the first part twenty-five (25) cents per ton for all coal mined in and upon said lands during the term of this lease, and agree to pay, whether mined or not, twenty-five (25) cents per ton for six hundred tons for each and every month during the term or continuance of this lease, payments to be made on or before the 15th day of each month for the coal mined (or upon which they have agreed to pay rental) for the month preceding. If more than six hundred tons are mined per month, the party of the second part are to pay twenty-five (25) cents per ton for all coal mined in excess of the said six hundred tons per month. And it is expressly understood and agreed that the excess of one month is not to be applied to another and different month in order to make up the minimum of six hundred tons for that month. Payments for said excess over six hundred tons per
130 month is to be made on the 15th days of August, November, February, and May of each year, beginning with the 15th day of August, 1870. It is understood that the party of the first part is to take & receive of the foregoing rents a proportion equal to her interests in the lands leased, it being the intention of the parties that at the minimum of six hundred tons per month she should receive a rental of one hundred dollars per month. No demands for rents upon the premises is necessary, but they shall become due and payable as other moneys or debts. A failure to pay said monthly rental of twenty-five (25) cents per ton upon six hundred tons of coal per month for a period of two months after it becomes due, or a failure to pay said rental of twenty-five (25) cents per ton for all coal mined in excess of said six hundred tons per month for a period of one month after it becomes due, may, at the option of the party *of the party* of the first part, be
131 considered and treated by her as a forfeiture of this lease, upon her giving ten days' notice in writing of her intention to claim and enforce a forfeiture. A failure to pay either of the installments of rents, payable monthly or every three months as aforesaid, may work a forfeiture. And a suit brought to collect the rents shall not effect the right of the party of the first part to claim and enforce a forfeiture. In the event of a forfeiture enforced the buildings, tramways, entries, and houses upon said land are to be and become the property of the party of the first part.

The party of the second part will render a statement at the end of each month, showing the amount of coal mined during that month, which statement will be sent by mail, or delivered to the party of the first part or her ag't. They are also to keep a plan of the working of said coal mines, and at all reasonable hours said mines and plan
132 thereof are to be kept open for their inspection by the party of the first part, her agents, or any engineer she may employ to inspect the same. The party of the first part reserves the right to enter upon said lands and remove any timber or material not necessary for

or used by the party of the second part in and about the mines or buildings as aforesaid, but she binds herself not to take any timber or material necessary to the working of said mines, nor is she in any way to interfere with the working, opening, or improving of said mines, or the transporting, or vending of coal over and on said lands. The party of the second part bind themselves to deliver possession of the premises leased, at the expiration of this contract of lease, with all the buildings, houses, tramways, tracks, entries, and approaches to said mines and upon said land. The entries and approaches to said mines are to
133 be in good condition. This lease is to begin and take effect from June 1st, 1870.

H. L. WHITESIDE.
JNO. BADGE.
ALBERT C. EATON.

The taking of this deposition adjourned till to-morrow at 1½ p. m., this 10th Jan'y, 1879.

R. M. BARTON, JR.,
U. S. Com.

The taking of A. C. Eaton's deposition resumed this 1½ p. m., Jan'y , 1879.

R. M. BARTON, JR.,
U. S. Com.

Quest. How long did you hold possession as tenants of Mrs. Gaskill; and to whom did you surrender possession; and what rents were paid, or should have been paid? But first state what sections or quarter sections belonged to the Vulcan Mines. To whom does the quarter section belong?

Ans. The mines are situated upon NE. quarter section 3, upon which are shutes, side-tracks, tramways, & some houses; SE. quarter section 3, upon which are the incline tramways & mines, also upon NW.
134 quarter section 11 & NE. quarter section 10 are openings and mines, all worked by us. The R. R. Co. (N. C. & St. L.) is upon NE. quarter section 3, all in Marian Co., Tenn. The range & township will have to be shown by *by* map. NE. quarter section 3 & NW. quarter 11 are known as property belonging to the Raccoon Mountain lease, made with Whiteside, Cravens & Boyce. NE. quarter section 10 belongs to Mrs. Whiteside. The SE. quarter section 3 is claimed by Mr. Haselton & Mrs. Gaskill. We held possession until July 1st, 1875, when we surrendered to Mr. Haselton. We paid to Mrs. Gaskill five thousand three hundred and seventy-one $\frac{91}{100}$ dollars ($5,371.91), for rent of Vulcan mine; & she has a judgment against us for about three thousand nine hundred and ninety $\frac{75}{100}$ dollars (3,990.75), for monthly (minimum) rents, & for maximum rents, with interest to Jan'y 18, 1878. I refer to decree of chancery court of Hamilton County, Tenn., in suit of V. A. Gaskill & wife vs. Badge & Eaton et al.

135 Quest. In paying the $5,371.91, did you pay monthly or yearly? Give a statement of the payment of these rentals.

Ans. We paid Mrs. Gaskill as follows:

Aug. 1st, 1868.	Coal		$40 00
Aug. 25th, "	Cash		100 00
Sept. 24th, "	"		200 00
Dec. 31st, "	"		100 00

1869.

Jan'y 1st,	1869.	Coal	34 00
Apr. 14th,	"	Cash	100 00
Aug.,	"	"	100 00
Sept. 8th,	"	"	100 00
Oct. 19th,	"	Coal	20 00
Dec. 15th,	"	Cash	100 00
Jan'y,	1870.	Coal	30 00
" 14th,	"	Cash	150 00
			$1,074 00

Mrs. H. L. Whiteside, or Gaskill, of the above, was $940 66⅔
In the above 133 33⅓

1,074 00

being the am't due Cravens & Boyce.

To am't above,		Mrs. H. L. Gaskill	$940 66⅔
M'ch 4,	1870.	Cash	100 00
June 3,	"	"	104 00
Aug. 13,	"	Bills pay	271 00
" 12,	"	Cash	150 00
Sept 21,	"	"	75 00
136 Nov. 7,	1870.	Cash	$75 00
" 30,	"	"	75 00
Dec. 8,	"	Coal	32 00
Jan'y 6,	1871.	Cash	75 00
Feb'y 22,	"	"	43 00
M'ch 10,	"	"	100 00
June,	"	"	100 00
July,	"	"	100 00
Sept.,	"	"	100 00
Feb'y,	1872.	Sundries	206 10
Nov. 25,	"	Bills pay	1,693 90
Aug.,	1873.	Cash	22 85
Oct. 1,	"	Bills pay. & rec	1,008 00
Feb'y 9,	1874.	Cash (R. R'd)	100 00
			$5,371 91

Quest. State the amount of coal mined monthly from June 1, 1870.
Ans.:

	Tons.	Lbs.
June, 1870	490¾	
July, "	308½	525
Aug., "	356½	350
Sept., "	447	1,020
Octo., "	422	785
Nov., "	513½	1,270
Dec., "	508	1,755
	3,049	6,405
Jan'y, 1871	621	690
Feb'y, "	600	915
M'ch, "	473	375

			Tons.	Lbs.
137	April, 1871		360	65
	May, "		349	1,800
June,	"		336	1,440
July,	"		435	
Aug.	"		456	535
Sept.	"		426	410
Oct.	"		479	120
Nov.	"		457¾	200
Dec.	"		294	830
			5,286¾	7,380
Jan'y,	1862		475	600
Feb'y,	"		474¾	185
M'ch,	"		202	495
April,	"		470	260
May,	"		731	1,510
June,	"		795	990
July,	"		905	730
Aug.,	"		1,000	360
Sept.,	"		1,049	900
Oct.,	"		1,121	1,695
Nov.,	"		940	896
Dec.,	"		969	1,770
			9,180¾	10,591
Jan'y,	1873		1,120	1,995
Feb'y,	"		943	1,630
M'ch,	"		844	1,779
April,	"		1,083	505
May,	"		1,072	1,085

			Tons.	Lbs.
138	June, 1873		907	1,545
	July, "		1,094	2,190
Aug.,	"		939	185
Sept.,	"		950	1,550
Octo.,	"		860	2,100
Nov.,	"		171	2,171
Dec.,	"		601	165
			11,084	16,896
Jan'y,	1874		711	2,825
Feb'y,	"		697	2,560
M'ch,	"		610	
April,	"		629	740
May,	"		658	235
June,	"		775	600
July,	"		804	2,090
Aug.,	"		719	140
Sept.,	"		720	

Octo., "	678	380
Nov., "	621	1,960
	7,622	12,530
Dec., "	665	1,575
Jan'y, 1875	576	900
Feb'y, "	371	860
M'ch., "	549	350
Apr., "	577	1,770
May, "	628	900

Lease ended June 1st, 1875.

139 Quest. State as well as you can the proportion of coal mined from sec. 3 and from other sections.

Ans. I cannot tell exactly and cannot be ascertained without a survey. My opinion is that we mined upon section (SE. Q.) 3 at least 30,000 tons; not a very large amount was mined from sec. 10; about 8,000 tons from sec. 11. I kept no account of coal mined from east quarter section until after the survey made by Hall, in 1874.

Quest. When you leased the lands from Haselton and Cravens, had you a written lease or was it a verbal lease, and what of its terms?

Ans. The agreement was made with Robt. Cravens, that we were to go on the property and he would do what was right; the rent should not be the lowest nor the highest. Mr. J. C. Haselton promised that he would make a lease, & that we should not pay any rent for three or four months after we commenced to ship coal. This was from information
140 given me by E. G. Eaton, when I became a partner of Badge & himself. Before we shipped any coal Mrs. Whiteside was put in possession by the sheriff of Marian Co., through her ag't Mr. J. P. McMillen, and after I became a partner of Badge & E. G. Eaton.

Quest. Where is E. G. Eaton and John Badge? What had Badge to do? Was he in a position to know anything additional to what you have stated?

Ans. E. G. Eaton is in Memphis, Tenn.; Jno. Badge is at Whiteside, and in bad health. I do not think Badge could give any additional facts in the matter. He sup't'd the mining of the coal, &c.; did not attend to the business.

Quest. When you leased or rented from Haselton & Cravens, did you know the boundaries by sections? And when placed in possession by McMillen and his accompanying sheriff, did you know such boundaries?

Ans. The boundaries was not known by us. We supposed she owned the whole mountain; neither she rented from Haselton &
141 Cravens nor when the sheriff put Mrs. Whiteside in possession, nor when we leased from Mrs. Whiteside. We had the lease made for one section in order to cover sufficient land to mine coal upon.

A. C. EATON.

Sworn to & subscribed before me this Jan'y 11th, 1879.

R. M. BARTON, JR., *U. S. Com'r.*

The further taking of these depositions is continued until the 13th day of January, 1879, at 10 a. m., when they will be resumed at this office.

R. M. BARTON, JR., *U. S. Com.*

The further taking of the depositions is continued on the application of respondent, J. C. Haselton, till 1 p. m., Jan'y 16th, 1879, when the further taking will be resumed at this office.

R. M. BARTON, JR., *U. S. Com'r.*

Quest. State as near as you can the amount of coal taken from sec. 10.

Ans. We kept no account of coal mined from section 10; to
142 the best of my judgment & belief we mined about 1,500 tons; we did not work long in section 10 on account of the thinness of the vein, and the distance & difficulty of getting the coal out & to the incline & tramways, having to haul some up hill & considerable distance.

Quest. Did or did not not Haselton demand from time to time an account of coal mined, and did you furnish same? Has Haselton ever relinquished his right to collect from you? Where was Haselton all this time?

Ans. He did demand an account of coal mined by us & I furnished him with the same; he has not to my knowledge; he was at Etna mines a small portion of the time; mostly away in New York & in Europe as I was informed; he has informed me he should collect the rents either from us or Mrs. Gaskill, & was particular to know the am't of coal mined, which I have always furnished him with when demanded.

Quest. When did you cease to work the mines?

143 Ans. On July 1st, 1870, as I have already answered.

Quest. Was not the lease of Mrs. Whiteside, now Mrs. Gaskill, more favorable than your renting from Cravens & Haselton?

Ans. As I understood from E. G. Eaton when I entered into the partnership with him & Badge that we were to pay 2c. per bushel for coal mined, by the terms of lease with Mrs. Whiteside, now Gaskill, we paid 1c. per bushel (or 25c. per ton).

Quest. When McMillen turned over to you the mines did he specify or show you boundaries?

Ans. He or the sheriff read a paper from the supreme court (writ of possession). I did not know the boundaries of the land. Mr. McMillen said that the writ of possession was for the land the mines were situated upon.

Quest. Up to June 1, 1870, the date of your lease, how much had you paid to Mrs. Gaskill or Whiteside for coal mined from SE. ¼ of sec. 3?

Ans. We paid Mrs. Whiteside, now Gaskill, for her proportion
144 of coal mined to June 1st, 1870, in full for in proportion of all coal mined, $1,316.06. This was for coal mined from SE. quarter sec. 3, one-half of which she claimed from purchase from sale by supreme court & ¼ of the other half as executrix of Jas. A. Whiteside's estate. The statement made heretofore shows the am't of coal mined from June, 1870, the date of lease.

Quest. What became of the property—the personal property—that you had when operating the mines?

Ans. The personal property was attached by Gaskill & wife, on or about the 2nd day of Sept. 1875, in the chancery suit brought by Gaskill & wife against Badge & Eaton, and was sold by clerk & master Feb'y, 1877. That is all that could be found, as when attached it was left to be used.

Quest. Were there any efforts made by Gaskill & wife to dispossess you? If so, state when and how it occurred.

Ans. About the 30th day of June, 1877, Gaskill & the sheriff of

Marian Co., Thos. P. Hall, came with a writ of possession issued from the chancery court at Chattanooga and read the same to me
145 and asked where the SE. Q. of sec. 3 was. I informed them if they would walk up the incline a certain distance they would be upon that quarter, which they did, and came back and left.

Quest. Was possession really given?

Ans. I was ag't for Bartow Iron Co., & running the mines for them, which I had been doing since Sept., 1875. I continued to run the mines until May, 1878, uninterruptedly. I would not agree to hold for Gaskill & wife, and no possession was given, & the property is still in the possession of Bartow Iron Co.

Cross-examination by compl'ts:

Quest. 1. Is the SE. ¼ of section three, hereinbefore referred to by you, all embraced in the boundaries of the lease made by deed to yourself, John Badge, and your brother, E. G. Eaton, by H. L. Whiteside (now compl't, H. L. Gaskill), which took effect from and after first day of June, 1870?

Ans. Yes.

Quest. You say you held possession of that part of the lease
146 till July 1st, 1875, when you surrendered full possession to Haselton; now the question is, did you continue to hold possession thereof, under the lease from Mrs. Gaskill, down to July, 1875?

Ans. We worked the mines until July 1st, '75; did not account to Mrs. Gaskill for royalty, nor report to her for coal taken. She had a suit in chancery court, Hamilton Co., against us, which I have referred to before. We did not account to her for royalty after said suit was commenced.

Quest. You went into possession under said deed of lease; now when did you quit holding under the deed, if you ever did quit?

Ans. I cannot answer, except as before, that we did not account to Mrs. Gaskill after she commenced the suit. She made no demand for possession under the lease.

Quest. Then while you did not pay rent to Mrs. Gaskill after she began the suit, yet you did remain in possession as before till you surrendered possession to Haselton, July 1st, 1875?

Ans. Yes.

147 Quest. How long had you been at the mines as agent of the Bartow Iron Co. when the writ of possession was executed which you have referred to?

Ans. I was ag't for Bartow Iron Co. from Sept. 1, '75.

Quest. In your original examination you speak of having furnished Haselton statements, or copies of statements, of amounts of certain coals mined, &c. Now the question is, at or about what date did you make out said statements for him, and about what date did you furnish them to Mr. Haselton?

Ans. I cannot tell dates; I made no memoranda of the dates. I furnished him statements from time to time, at least five or six between 1870 & 1875.

Quest. Did you ever pay def't, Haselton, any money for coals dug out of Vulcan mines at any time from June 1st, 1870, to July 1st, 1875; if so, how much, & when; or do you know whether or not your brother E. G. or John Badge ever did so?

Ans. No; we did not, any of us.

Quest. Do you know that neither of the three persons named
148 ever paid Haselton anything for any part of coals taken out for any part of the years mentioned in the last above question?

Ans. Yes; I know that neither of them ever did pay Haselton any money. I kept the books of the concern, & if any money had been paid I should have known it.

Quest. Do you know how much coal has been taken from the Vulcan mines since June 1st, 1875; if so, how much; & how much has been taken out by the Bartow Iron Company?

Ans. I will have to consult the books, which are not here; will get them, and answer hereafter. Since writing above I have consulted the books of the company, & find that we mined coal from Sept. 1st, '75, to the closing of *of* the mines, May, 1878, from SE. q'ar.,

Sec. 3	22,371	tons.
Sec. 11	10,358	"
Total	32,729	"

Quest. Look at the paper here shown you, purporting to be signed by yourself, John Badge, and J. C. Haselton, & witnessed by F.
149 H. Eaton, and then state whether it is a copy of the original, and was signed by all said persons, and when; and make the copy (Exhibit A) to your answer to this question.

Ans. I have not the original before me, but from recollection should say it was a copy of paper signed as said; it was made on 7th day of Nov., 1874, and was signed on that day, and I make it Exhibit A to this deposition.

Quest. Look upon paper here shown you purporting to be signed by John Badge, E. G. Eaton, & A. C. Eaton, dated 7' day of Nov'r, 1874, and then state whether it is a copy of the original, and was also signed the day it bears date & by all said persons, and also make it Exhibit B to your answer to this question.

Ans. It is a copy of aforesaid paper and was signed 7th day of Nov'r, 1874, by said persons, and I make it Exhibit B to the deposition.

Quest. Look upon paper here shown you, and state whether it is a copy of the original proposition made out and delivered by you
150 to compl't H. L. Gaskill, as a basis for the lease thereafter made to take effect June 1st, 1870, which lease has been copied into this your deposition, and make it Exhibit C to your answer hereto?

Ans. It is a copy of paper referred to in the quest.; made by me & given to E. G. Eaton, as some upon near what I thought would do for a lease. Afterward I refused to take lease without one section of land instead of one-quarter section. It came from Mrs. Gaskill's, & I suppose it was given to her by E. G. Eaton. I make it Exhibit C to this deposition.

Quest. State, if your remember, about what time J. P. McMillin, as agent for compl't H. L. Gaskill (then H. L. Whiteside), was put in possession of SE. ¼ of S. 3 by writ of possession from the supreme court of Tennessee, in case of Alley, pl'ff in error, v. J. C. Haselton & others, defendants.

Ans. Sometime in Dec., 1867, or near that time, the dep'ty sheriff of Marian Co. & Mr. J. P. McMillin came to our storehouse, which is situated upon NE. Q. of sec. 3, & read a paper purporting to be a writ of possession from supreme court, and said (the sheriff) put
151 Mr. McMillin, ag't for compl't H. L. in possession as I understood it of the mines. The mines are upon SE. quarter, sec. 3, & other quarters.

Quest. Were you & others mining on SE. ¼ of S. 3 at or before the date of Dec'r, 1867? And were you mining on it from that date to the date of lease aforesaid, to wit, June 1st, 1870?

Ans. We had commenced to mine coal before the writ of possession, but had not shipped any coal. We mined & shipped coal from that section after that very soon date & up to the lease.

Quest. From and after the time when compl't H. L., was put in possession under said writ of possession down to the date of said written lease of June 1st, 1870, were you & these connected with in mining, & holding possession under compl't H. L., to the extent of compl't H. L.'s interest, or the interest claimed by her in SE. ¼ of section 3, as tenants thereof, attorning to her as claimed, and paying rents to her?

Ans. We held possession under J. P. McMillin as ag't for comp't H. L. & Cravens & Boyce. We paid rents to him for a portion of
152 the time & afterward to her, H. L., for the share of the mines claimed by her during the time mentioned in the question.

Quest. Was your holding possession thereof, as aforesaid, open and notorious, and adverse to all others, from Dec'r, 1867, to June 1st, 1870?

Ans. Yes.

Re-examination:

Quest. State if Haselton was not all the time claiming you as his tenants? In what regard did he have for your lease with Mrs. Gaskill?

Ans. Yes, he claimed that we were in possession under him first & that he should collect from us or Mrs. Whiteside (or Gaskill). He or his ag't, Milo Pratt, made demand for rents. We did not pay rents to Mr. Haselton or his ag't, Milo Pratt.

Quest. At the time you entered into the agreement—Exhibit A—to this deposition, where were you running, upon what sections, and to whom did the same belong?

Ans. We were running upon sec. 11; it was claimed by Mr. Haselton, by purchase from Cravens & Boyce, & by lease of Etna
153 mines, or rather Raccoon Mountain Coal Co.; and he also claimed ⅜ interest in SE. Q. sec. 3, by purchase from Cravens & Boyce. His title papers will show dates.

Quest. In your Exhibit B to this deposition, why were not rents secured for more than "⅜th interests in said mines"?

Ans. The rents secured was for the interest Mr. Haselton purchased from Cravens & Boyce. We did not propose to pay Mr. Haselton rents for any except the ⅜ interest as above, because we were bound by lease to Mrs. H. L., & did not propose to pay to two parties.

Quest. Did you have any writings from Mrs. Whiteside or Gaskill before you made the lease with her in June, 1870?

Ans. No, from 1867 till June, 1870, we held under verbal lease.

Quest. While you were there under the lease of Mrs. Gaskill, were you sued by Haselton for the mines?

Ans. Yes; in circuit court, Marian Co., Tenn., we & Gaskill & wife were sued in an action of ejectment by Haselton, & I was informed it was dismissed by Haselton. I refer to the facts as shown by the
154 record of that case for greater certainty.

Quest. After Hall's survey, and you quit paying rents to Mrs. Gaskill, in June, 1874, did you continue to hold under her lease, or how did you regard yourselves as holding?

Ans. Mrs. Gaskill commenced a suit against us, as stated before, & we did not pay rents to her, or any one; we thought we would not pay until after that suit was decided.

I did not think the lease would hold good in law, and the title to the

property was in dispute. The suit was in chancery court, Chatta., in 1874.

A. C. EATON.

Sworn to & subscribed before me this Feb. 17, 1879.
R. M. BARTON, *U. S. Com'r.*

155 EXHIBIT A.

JOHN A. REOBLING'S SONS ET ALS. *vs.* J. C. HASELTON ET ALS. } No. 1977. In chancery, at Chattanooga.

The firm of Badge & Eaton, composed of John Badge, E. G. Eaton, & A. C. Eaton, is this day dissolved, E. G. Eaton retiring from the firm, and all property of the Vulcan mines is conveyed to Badge & Eaton (A. C. Eaton), a new firm of Badge & Eaton, James C. Haselton having endorsed notes to the extent of $2,500 to pay old firm debts, and having granted delay for rents due him from the Vulcan mines, in consideration of which we agree, that after said rents are paid, and all the debts of said old firm are settled, then the said Haselton shall become equally interested as one-third owner with John Badge and A. C. Eaton in all the property & incomes of said Vulcan mines, the mules, cars, iron flues, wire ropes, storehouses, iron safe, desks, &c., in fact all property that may then be on hand, as well as any profit, if any; we further agree with said Haselton that the money arising from operating said Vulcan mines from this date shall be applied, first, to the
156 expenses of operating the same, and next to the payment of other debts of the old firm of Badge & Eaton, except the sum of $50 per month for each of us, John Badge & A. C. Eaton, to be retained for necessary expenses to live upon.

(Signed) JOHN BADGE.
A. C. EATON.
J. C. HASELTON.

Witness:
F. H. EATON.

(Endorsed:) Enrolled cases No. 9, pages 209 & 210. Exhibit A to A. C. Eaton's deposition.

EXHIBIT C.

Lease for $\frac{4}{6}$ of property called the Vulcan mines, amount owned by you, viz, 1 quarter section, on which the coal is now taken, and the quarter section adjoining on each side, the exception of the quarter section owned by W. F. Stone.

To John Badge & Albert C. Eaton, or their successors, for the term of 5 years, with the privilege of 10, they to pay at the rate of 25c. per ton for all coal taken from the mines.

They to pay $75.00 each month until January, 1871, for each month afterward $100.00 until the expiration of lease.

157 Payments to be made on or before the 15th of each month for the month preceding. Providing if in any month or year they do not take out coal enough from the mines to amount to the monthly or yearly rent paid, they to take coal without charge from mines to make up the amount already paid at the rate of 25c. per ton, providing

they take coal enough out over the number of tons that amounts to the monthly rent to make up the difference.

They to make you a written statement of all the coal mined in tons in each month.

They to pay for all coal taken from mines over (if any) the amount paid monthly at 25c. per ton in January of each year.

Exhibit No. 4 of dep. of A. C. Eaton.

(Endorsed:) Exhibit C to A. C. Eaton's deposition.

EXHIBIT B.

Ex. A to Haselton's answer.

The firm of Badge & Eaton, of the Vulcan mines in Marian County, Tennessee, is composed of John Badge, E. G. Eaton, & A. C. Eaton.

It is agreed between us, & we respectively convey, as follows: All
158 the property of the Vulcan mines belongs to and become the property of John Badge & A. C. Eaton, under a new firm of the name of Badge & Eaton, and the saw-mill property at Shell Mound, property of the late firm, belongs to & becomes the property of E. G. Eaton. John Badge & A. C. Eaton, it is agreed, are to pay the existing debts of the said late firm against the Vulcan mines, and E. G. Eaton to pay the debts against said saw-mill property. Said late firm is indebted to J. C. Haselton in the sum of one thousand dollars for rents due him for ⅜ interest in said mines; is also indebted to the 1st National Bank at Chattanooga, & to R. L. Weakly, Fichel & Brothers, Evans, Fite, Porter & Co., & Carrol, Hollings & Co., of Nashville, to pay said bank and said Nashville creditors named. The new firm of Badger & Eaton (A. C. Eaton) have this day executed ten notes, of $200.00 each, falling due monthly, the first at one month & the second at two months, the third at three months, and so on to the end of ten months, and also two notes of $100.00 each, due at eleven months, and one note at twelve months for three hundred dollars, and all of said notes payable at
159 the First National Bank of Chattanooga, and payable to said J. C. Haselton, to be by him endorsed and made negotiable, and to be used in paying said bank and said Nashville creditors as aforesaid; and to secure said J. C. Haselton in the rents due him as aforesaid, and for his endorsements upon said notes, we, John Badge & A. C. Eaton, do hereby transfer & convey to Daniel B. Pillsbury all of our property at the Vulcan mines, consisting of iron on the inclined plane and in or about the said mines, the incline planes, five mules used in said mines, wire ropes used in said mines, all incline cars, some 8 or 10, all bank-cars, some 40 in number, block-smith tools, and all the coke now ready for market on said mines, a storehouse on the right of way of the N. & C. R. R., and all office fixtures, iron safe, desks, &c. If any two of said indorsed notes shall become due and remain unpaid after maturity, then it is agreed that the whole number of said notes shall become due, & said Pillsbury, as trustee, is authorized to advertise & sell any or all of said property herein conveyed to pay said unpaid notes and said debt to
160 said Haselton for rents as aforesaid. Said advertising will be such as required in execution sales. We waive the oath of said Pillsbury & the bond as trustee required by statutes in such cases until upon default in payments as aforesaid it becomes necessary for him to sell the property, when he will then give bond so as to secure any surplus of proceeds of sale for other creditors.

(Signed) JOHN BADGE.
E. G. EATON.
A. C. EATON.

Duly acknowledged & registered the same day. The original will be produced, if required, on the trial.

(Endorsed:) Exhibit "B" to A. C. Eaton's deposition.

D. B. Pillsbury's deposition.

In Federal court at Knoxville.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

Witness for defendants, D. B. PILLSBURY, being sworn, says:

Quest. 1. State your connection with J. C. Haselton and the Etna mines and all the facts you may know in regard to the attach-
161 ment levied upon property in this cause.

Ans. I am employed by J. C. Haselton as the agent of the Etna mines. On Oct. 20th, 1877, T. P. Hall, sheriff of Marian County, attached all goods in the Etna mines store, locked the door, and carried away the key, leaving the goods and the store in charge of John Milligan as keeper. He also put another attachment on twenty-five thousand bushels of coke that had been previously attached by V. A. Gaskill. We at once requested said Hall to remove the goods and give us possession of the store, as we were compelled to supply our workmen with goods, and every day that the store was closed was a serious loss to us. But the goods were not removed and possession of store given until Nov. 15, p. m., making twenty-seven days that the store was in possession of the sheriff, and our business interrupted. The goods were removed by S. H. Alexander and S. B. Burnett, they being deputized by said Hall. An appraisal of the goods removed was *removed was* made by James Roope and myself, showing the market value of said goods to have been not less than thirty-nine hundred dollars.
162 A memorandum covering thirty pages can be shown if desired.

Our monthly sales at that time would average thirty-five hundred dollars, and our books show our store profits to be at least eight hundred and fifty dollars monthly.

The coke still remains in our yard, although the sheriff has been notified to remove it, as we need all the room in our yard for stocking coke.

Quest. 2. Could another storeroom or house have been procured? What were the rents of such a house?

Ans. None in which we could have carried on our business, as we usually had on hand from four to five thousand dollars' worth of goods, and all other buildings were small, with poor roofs, and no fixtures. Cannot state the rent.

Quest. What were the number of clerks in store and their monthly salaries?

Ans. Two; one on a salary of one thousand dollars per annum, the other forty dollars per month.

Cross-examination by complainants:

Intg. 1. X. You say in your first answer that you are acting as agent of J. C. Haselton at the Etna mines. Please state how many em-
163 ployees there are now at work at the Etna mines all told, and how many digging coal.

Ans. I think that now there are about fifty miners and fifty other employees.

Intg. 2. How much coal per day do the 50 miners each dig on an average, & what do you pay them per bushel for digging?

Ans. From two to two & one-half tons per day is an average in Kelly vein, in which vein we now work, and we pay from fifty to eighty cents per ton according to heig'th of coal.

Intg. 3. How long have you been working in the Kelly vein?

Ans. I think since 1861.

Intg. 4. What is the average cost of transporting coal from the mine to railroad cars for shipment per bushel or per ton?

Ans. For the last year I think the average has been about nine cents per bushel.

Intg. 5. How many tons per month can fifty miners average in digging coal in the vein named? I mean altogether.

Ans. They dig on an average 2½ tons per day for every working day, but they will not, and I can give no approximate estimate.

Intg. 6. How many tons per month would the fifty hands dig, on an average, for a year—I mean the hands now at work digging coal
164 in the Kelly vein—provided they work as well as they are now working?

Ans. I cannot tell how much they could do, but can tell how much they have dug for the last year, or for a longer time, by referring to our books.

Intg. 7. How many tons would such hands dig per month, all told, 50 of them, provided they all worked five days each week, & worked as well as they are now working?

Ans. I cannot tell without referring to our books.

Intg. 8. What number of days per week do miners generally work?

Ans. Our miners are working only three or four as a rule; they are supposed to work five if they can get work to do.

Intg. 9. What are you selling coal for, at the mines now, per bushel; and what do you get for coke, delivered on the cars for shipment?

Ans. We are selling coal for from eight to twelve and one-half cts. per bush., and coke for twelve and one-half to fifteen cents according to quality.

Intg. Explain why there is such a variation in the price of coal, & also please state what, in your opinion, is the average price you are getting for coke.

165 Ans. Our highest price is for prepared blacksmith's coal, also in making a price we consider the quantity to be sold and the time allowed for payment. The average price of coke is about fourteen cents.

Intg. 11. What, in your opinion, is the average price of the coal sold at the mine?

Ans. About ten cents per bushel.

Intg. 12. Do you & have you for several years kept a store at the mines, in connection with the mines, to sell goods to your employees?

Ans. We have.

Intg. 13. What per cent. of their wages do you pay the employees in goods from the store, and what in money?

Ans. I can give no per cent., as some men never have a balance due, while others save half of their wages.

Intg. 14. What proportion of the hands take all or nearly all their wages out of the store, in your opinion?

Ans. Think three-fourths of them take up nearly all of their wages in the store.

Intg. 15. Is the coke spoken of in your first direct answer the actual coke that was attached in this case?

Ans. I think it is.

Intg. 16. Has not the coke which was actually attached been
166 sold and removed, & the pile of coke attached been supplemented by coke burned since the attachment was levied?

Ans. A part of the coke first attached was removed by consent of the sheriff, and afterward replaced, but whether before or after the last attachment, I am not able to state. The first attachment, above referred to, was an attachment levied in a previous suit.

Intg. 17. Was not all or nearly all the coke levied on by what you call the first attachment sold and removed, & is not the greater part of the coke spoken of in your first answer coke burned since the first levy & put back to supplement the pile of coke sold, & was not the supplemented coke on the ground and ready for the second attachment?

Ans. We have always kept on hand at least 25,000 bushels of coke, subject to the order of the sheriff, or the keeper appointed by him, and I cannot now tell whether the coke attached in this suit is the identical pile attached in first suit or not. When first attachment was made the coke was in two piles. One in front of the ovens being in our way, we asked permission of the sheriff, Hall, to sell that pile, and burn
167 a like amount and place on the pile on the other side of road. Afterward, wishing to cut a drain or culvert through the land on which this pile not before removed was, we sold much of the coke and afterwards replaced it, but cannot now give the date of the sales; can by referring to our books.

Intg. 18. You speak of "the keeper" of the sheriff; who was that keeper?

Ans. D. B. Pillsbury.

Intg. 19. To whom did the sheriff give permission to remove the attached coke?

Ans. To me.

Intg. 20. Did you remove the coke in question of your own motion or by order of J. C. Haselton?

Ans. J. C. Hasleton never gave me orders to move it.

Intg. 21. Were you acting as his, J. C. Haselton's, agent when you moved it, and was said Haselton aware of the moving of the attached coke when it was sold and being moved, and did Haselton get the benefit of the coke sold that had been attached?

Ans. I was agent of Etna mines at that time, and was acting in that capacity. J. C. Hasleton was aware that the coke was being
168 moved, and sold at the time it was being moved; and I suppose that Etna mines received the benefit of the sales of said coke.

Intg. 22. What do you mean by Etna mines; who compose what you call the Etna mines?

Ans. J. C. Haselton is the proprietor of Etna mines.

Intg. 23. Was your permit to sell & move the attached coke given you by the sheriff, Hall, in writing, or was it verbal?

Ans. Verbal.

Intg. 24. How came you to ask the sheriff for the privilege of selling & moving coke upon which you knew there had been placed an attachment and injunction?

Ans. Because the coke was in the way, and we should have insisted on its being moved from the ground so that it would not interfere with our carrying on our regular business. To have moved it would have been an injury to the coke.

Ans. Two days before the levy was made I run to Whiteside two cars of coal that were sold, as I wished to deliver them before the sheriff came; had heard that he was coming.

Intg. 45. How many bushels of coke are there now at the Etna mines on the yard?

Ans. From 25,000 to 40,000 bushels; my estimate.

175 Intg. 46. Please state your best judgment of the number of bushels of coke attached in this case—all told—in both piles.

Ans. All of the coke attached in this case was in one pile on opposite side of the dirt road from the coke ovens, and the sheriff informed me that this levy was only on the 25,000 bushels subject to the previous attachment, but think that at that time there were 30,000 or 35,000 bushels in that pile.

Intg. 47. Was any written statement made & preserved of the amount of the attached coke; that was sold, showing the date of sale, amount sold, to whom sold, & at what price?

Ans. No special entries were made of the sales.

Int'g. 48. Did or did not J. C. Haselton approve all your actions in moving & shipping the attached coke?

Ans. He never made any objections to my doing so.

Int'g. 49. Since the attachments what have you done to keep the attached coke separate from the coke since made & thrown out on the yard?

Ans. As before stated we sold the coke in front of the ovens and put a like amount of new coke on the pile on other side of dirt road. Since that time we have used the ground in front of ovens; in loading

176 for our regular trade I have been obliged to put other coke on the large pile, but could not keep it separate from the attached coke, and did not try to do so, and cannot now tell which is the attached coke and what has been burned since the attachment.

Int'g. 30. Who appointed you & Roope to appraise the store of goods, & did you put in your schedule of prices, your selling prices, or what the goods cost in market?

Ans. J. C. Haselton requested James Roope and myself to appraise the goods attached. The value placed on them was, in our judgment, their market value delivered at the store. The value given by us had nothing to do with the selling price.

Int'g. 51. What is the net profit made on the coke & coal per bushel shipped from the Etna mines, taking the time you have been acting as agent? Give your best opinion.

Ans. I have no opinion in regard to the profit or loss on coal & coke shipped for the time I have been acting as agent, neither can an estimate be reached, as no account of stock was taken at that time, and none has been taken since, and without such an account no one

177 can tell anything about it.

Intg. 52. Does the Etna mines annually pay expenses or run the present manager of them J. C. Haselton; in debt are the' worth anything to said Haselton or not?

Ans. I suppose they pay expenses, as we have always been able to pay our present debts. The store when open pays a monthly profit on an average of $850.00 monthly, but that is not a net profit on coal or coke. I do not know what value J. C. Haselton places on the Etna mines, neither do I know whether it is for his interest to hold them or not.

Intg. 53. Has not Mr. Haselton made large investments in property

away from the mines, paid for in coal or coke taken from the Etna mines?

Ans. He has made investments away from the mines and paid for them in coal & coke, but I do not know their value.

Intg. 54. How many bonds of the Bartow Iron Company has Mr. Hazelton purchased, bonds of $1,000 each, & paid for in coke & coal—1st-mortgage bonds?

Ans. I think he had at one time thirty-one; suppose he still holds them.

178 Int. 55. How many bonds of the Rising Fawn Company has Mr. Haselton purchased & paid for in coal & coke, bonds of $1,000 & 1st-mortgage bonds?

Ans. I do not know.

Intg. 56. Has Mr. Haselton any income in this State outside of the Etna mines?

Ans. I do not know anything about Mr. Haselton's private affairs. I am not his private secretary.

Intg. 57. Has not the Etna mines paid large profits every year since you have been agent at them?

Ans. As before stated I have no opinion in regard to profits made or losses sustained by the Etna mines, since I have been acting as agent, excepting the profits made in the store.

Intg. 58. With your 100 hands now working, what is your monthly expenses?

Ans. On an average of $4,000.00.

Intg. 59. What per cent. do you generally charge the miners for goods, over cost price? I mean your general per cent. on the dollar.

Ans. Our annual profits in store show that we make a profit of about 33⅓ per c't on goods sold.

Intg. 60. Where do you buy your goods generally, & don't you buy your goods, mostly, monthly?

179 Ans. We buy in New York, Boston, Nashville, Louisville, & Chattanooga. Generally buy monthly or quarterly—mostly monthly.

Intg. 61. Has Mr. J. C. Haselton any income outside of Etna mines in Tennessee, that you know of?

Ans. None that I know of.

Intg. 62. Did you ever know of Mr. Haselton bringing any funds to Tennessee from the North, or his New Jersey home, to put into his Tennessee business?

Ans. I do not know of his putting any money brought or sent from the North into the Etna mines since I have been agent of those mines; know nothing about his other business.

Intg. 63. What amount of coke was accumulated on the Etna coke yard at any one time in 1874? I mean the number of bushels.

Ans. As near as I can now tell from memory and can learn from the books, think the greatest amount at any one time must have been 300,000 bushels.

Intg. 64. How much more ground was covered by the 300,000 bushels coke *coke* than was covered or occupied by the coal on the yard

180 at the time of the attachments named in this deposition; if any, how much?

Ans. About twice the amount.

Intg. 65. What were your store sales in amount during the time, the 27 days, the storehouse was in charge of the sheriff?

Ans. Cannot tell the amount of goods sold without reference to our books.

Intg. 66. What did your $1,000 clerk & your $40 a month clerk do during the time the store was in the hands of the sheriff?

Ans. They were idle part of the time, and at times tending a commissary we fitted up to deliver the men meat and flour, &c., & remained on regular pay.

Intg. 67. Was not their time always at the command of Mr. Haselton?

Ans. It was.

Intg. 68. How much of the time do you think they were idle?

Ans. The senior clerk was idle nearly all the time. The junior clerk was most of the time on the commissary.

Intg. 69. Was there no other work about the mines the senior clerk could have been profitably employed at?

Ans. He was not needed at any other place.

Intg. 70. In answer to X-intg. 17, you say you can give dates
181 of sales by referring to books; can you not give amount of sales as well by referring to the same books?

Ans. Yes; I can give amount of coke sold at the time we were shipping from that pile, but cannot say what proportion was taken from that pile. An estimate will be found in my answer to question 30.

Intg. 71. How much coke and coal was shipped from Ætna mines during 1878, all told? Give in tons as near as you can.

Ans. Without consulting our books, should say about 24,000 tons.

Intg. 72. How much coke & coal was shipped from Ætna mines during the last two months of 1878 & Jan., 1879?

Ans. In November of 1878 sold about 1,200 tons; in Dec. about the same amount; in Jan. of 1879, think about 1,400 tons coke & coal.

Intg. 73. Was there coke made & coal dug during the *the* three last months named, in ans. to intg. 72, that was not shipped? If so, please state as near as you can how much. In other words, give the product of the mines for the months named in tons.

Ans. In Nov. of 1878 the number tons mined 1,603; in Dec.,
182 1,629 tons, & in Jan. of 1879, 1,592 tons coal.

Intg. 74. How many miners did you average last year, for the 1878? Give your best recollection.

Ans. I think about sixty-five.

Intg. 75. What was the net profit of the Etna mines, taken in connection with the store at the mines, for the year 1878? Give your best judgment.

Ans. The profits derived from the sale of coke & coal and profits from the store have always been kept separate. The store for the year 1878 showed a profit of $15,000. Have not estimated on profit of the mines for the year. For the month of Nov. the expenses of the mine, or cost of the coal mined, was $4,102.39, and the sales of coal & coke for that month $3,496.35, showing a loss of 606.04. For the month of Dec. the cost of coal mined was $4,591.18, and sales of coke & coal $3,550.69, making a loss of 1,040.49. I have not the accounts of the other months of the year 1878 with me.

Intg. 76. Did you sell the entire product of the mine for the months of Nov. & Dec., just reported above, & was all you dug of coal at your market price put in your 75th answer for last Nov. & Dec.?

183 Ans. We sold all of the lump coal mined, but probably the pile of fine coal was increased somewhat; all we dug was sold at our regular market price, and is included in figures in ans. 75.

Int'g. 77. Is any of the fine coal counted into the answer of int'g. 75?

Ans. All of the fine coal sold is included in answer 75; none of that left in the pile is.

Int'g. 78. What is the value of the fine coal left in the pile named in your last answer above? Give your best judgment.

Ans. It will be difficult to tell; if sold at once might bring 10 cts. per bushel; if it remains on hand will soon deteriorate so that it would not bring half price; could not now say how much the coal increased during that month, but should think about one hundred and fifty tons.

Int'g. 79. What is the difference in the cost of mining coal at the Etna mines & at the Vulcan mines? Give your best judgment.

Ans. I do not know anything about the mining of coal at the Vulcan mines.

184 Int'g. 80. Do you not think from what you know of both mines that the cost of mining the Vulcan mines is one-third less than at the Etna mines? If not, please give your best judgment as to the difference.

Ans. I should think that that was a fair estimate of the difference.

Int'g. 81. Please give the amount of the sales to the laborers at the Etna mines for the time the store was in the hands of the sheriff.

Ans. I have to suspend again to examine the books at the mines. On examining the book find the sales for that time to have been about $2,000.00 *dollars*. After examining the book, I wish to modify my answer to interrogatory 71. The amount of coal mined for the year 1878 was about 22,500 tons instead of 24,000 tons, as there stated. The books show between 22,500 & 23,000 tons.

Int'g. 81. You say about $2,000 as to sales, named in last question above; please make your statement more certain, or state why you cannot, and state whether the sales amounted to over or under $2,000.

185 Ans. The total amount of sales from the time the store was closed to Nov. 20th were $2,800. I remember we had a large trade after the store opened, and think that the $2,000 a fair estimate for the time the store was closed. No daily amount of sales were kept at that time.

Int'g. 82. Are you of opinion that the sales from the 15 Nov. to the 20th amounted to $800.00?

Ans. Am well satisfied that they were.

Int'g. 83. Were you acquainted with E. Alley, who sold the Vulcan mines property, or rather a part of said property, to J. Holmes Agnew & J. C. Haselton?

Ans. I do not recollect of seeing E. Alley.

Int'g. 84. Do you know whether he is dead or not?

Ans. From information I learn he is dead.

Int'g. 85. Do you know whether said Alley is the same person who gave his deposition in the suit of V. A. Gaskill & wife vs. Badge & Eaton et als., No. 1587, in chancery court at Chattanooga, Tenn.?

Ans. I do not know.

Int'g. 86. During Nov. & Dec., 1878, when you say the expenses of running the mine was more than the income, did you not during those months have extraordinary expenses, more than your usual

186 monthly expenses; and, if so, for what & how much?

Ans. No; the yearly statement shows that for seven months of the year the expenses were greater than for the two mentioned and for three were less. The sum total of expenses for the year was $57,478.57, and the sales for that time $54,817.99, showing a loss for the year, $2,660.58.

Int'g. 87. How much coal & coke on the yard at the mines, & shipped away, that was unsold & the product of the work of 1878? Give your best opinion.

Ans. I do not think the amount of coal & coke on hand the first of 1879 was more than the amount on hand first of June, 1878.

Int'g. 88. How many goods do you sell per month, on an average, outside of the employees of the Etna mines?

Ans. We do a small barter business with outside parties, perhaps $150.00 per month, but have no cash trade.

Int'g. 88. What proportion of your goods do you buy at Nashville?

Ans. Probably about one-third of them.

Int'g. 89. In whose name has the store at the mines been run-
187 ning since it was surrendered by the sheriff, Nov. 15th, 1877?

Ans. It has been running in the name of J. C. Haselton, with the exception of Feb., March, Apr., & May of 1878, when it was run by Pillsbury & Furness.

Intg. 90. Who runs the store at the mines now?

Ans. J. C. Haselton.

Int. 41. Do you not pay for all your goods you buy for the store either in coal or the proceeds of coal?

Ans. Yes; I suppose they are all paid for in that way.

Intg. 92. What profit did Pillsbury & Turness realize for the four months they run the store; what did they give for it when they bought it, & what did they get for it when they sold out, & of whom did they buy and to whom did they sell?

EXCEPTION TAKEN—To this question defendant Haselton excepts, as it is a private matter wholly irrelevant to the matters in issue. As the great bulk of preceding questions are upon cross-examination, the question is not pertinent but impertinent, and wholly beyond the rules of evidence, making it a matter between complainant and witness, who is not a party to this suit.

NASH. H. BURT,
Attorney for Haselton.

188 HOLDING OF COM'U'R.—The commissioner holds that the objection made to the 92 intg. is well taken so far as it relates to the profits of Pillsbury & Furness; at present the witness cannot be required to answer what the profits of Pillsbury & Furness were until they are proven to have been connected in interest with the defendant; when that is done the witness will answer what the defendant's interest in the profits during the time in question amounted to. If the purchase of the store was made from the defendant the witness will answer what he was paid for it, and if the sale was made to him the witness will answer what he gave for it.

From which ruling of the com. the complainantz & defendants pray an appeal to the court, which is granted.

R. M. BARTON, JR.,
U. S. Com.

Ans. Pillsbury & Furness paid no bonus for the store, but took the goods on hand at their market value from J. C. Haselton, & paid for them, and sold to J. C. Haselton. J. C. Haselton's profits in the store for the year 1878 was $15,000, as before stated. We took an in-
189 ventory when we purchased, and I think we had on hand about $2,500.00 worth of goods.

Intg. 93. You say you paid for the goods; please state how much you paid & whether in money or notes?

EXCEPTIONS TAKEN.—Defendant, Haselton, excepts to this question because this store and what was paid for it and what is was sold for has no connection with the Vulcan mines, and more especially because complainants have no right to ask any questions since the goods were attached and taken by the sheriff, which was in October or Nov'r, 1877.

N. H. BURT,
Att'y for Haselton.

HOLDING OF COM'N'R—The commissioner on the argument by the att'ys that the Vuncan mines have no connection with the store, and that the purpose of this suit is to have an account for the profits of the Vulcan mines, holds that all questions relative to the profits of the store, its price, &c., are impertinent and irrelevant so far as the com. can ascertain the scope of the suit from the statement of the att'ys, but the defendant having waived the objection by asking as to the
190 profits of the store the complainants are entitled to cross-examine on that proof as to the profits of the store, its value, &c., under Haselton's management, and for that reason the witness will answer the question so far as it relates to what the price was.

Compl't prays an appeal. Granted.

R. M. BARTON, JR.,
U. S. Com'n'r.

Ans. We took inventory of the goods when Pillsbury & Furness took possession of the store, and on the books were charged to the account of Pillsbury & Furness. Said Pillsbury & Furness at that time had a sufficient amount due them from J. C. Haselton to pay for these goods, which amounted to about $2,500, and it was agreed with J. C. Haselton that said amount due should be used for that purpose. The said amount was due to D. B. Pillsbury and W. F. Furness for salaries.

Intg. 93. You say you sold to Haselton. Please state how much you got for the store when you sold, & whether you had more goods when you bought or sold.

Ans. When Pillsbury & Furness took the store it was with the understanding that they were to run it for one year, Mr. Haselton
191 guaranteeing to them a certain amount of profit. Mr. Furness wishing to retire from the firm at the expiration of four months, thereby breaking the compact, we agreed to return all goods on hand to said Haselton, he paying to each of us the amount of the proportion of guaranty for four months, and that amount is credited on books to each of the firm as their profits for that time, and a settlement made with Mr. Furness on that basis.

Int. 94. Credit on what books?

Ans. On the Etna mines books.

Int. 95. Were there any separate books kept by Pillsbury & Furness during the (4) four months named separate and distinct from the Etna mine books?

Ans. There were separate accounts kept, and some separate books, although we may have used same ledger; cannot now say; but all of the accounts were kept entirely separate and distinct, as the Etna mines of J. C. Haselton had nothing to do with the store while it was being run by Pillsbury & Furness.

Int'g. 96. Did J. C. Haselton share any of the profits made by
192 the store during the four months named?

Ans. J. C. Haselton paid to Pillsbury & to Furness the amount of the guarantee, as before stated, & if the store profits were more than that amount, and I suppose they were, J. C. Haselton derived the benefit of that profit. But no estimates of the profits of store were made until the close of the year.

Int'g. 97. In your opinion, in any one year since you have been at the mines, has the trade of the store, outside of the employees of the Etna mines, amounted to over fifty dollars a month?

Ans. My answer to interrogatory 88 is, according to my best knowledge & belief, trade in barter $150.00 per month, cash on an average at this time, $15.00 per month.

Int'g. 98. Please explain how you manage your barter trade, & whether you mean by your answer that your outside trade increases your business $1,800 a year.

Ans. Our barter trade is only an exchange of store goods for country produce. These transactions do not appear on our books, and are not considered in goods bought or sold, as it does not affect the gen-
193 eral result for the year. Of course it increases the general business of the year without affecting the profits.

Int'g. 99. Were you & Furness equal partners in the four months' partnership?

Ans. We were.

100 int'g. When you bought of Haselton, did each of you, Pillsbury & Furness, give said Haselton a written showing or receipt against $1,250 of your salaries?

Ans. No; I did not.

Re-examination.

Quest. State if there were accounts kept in the name of Etna mines and J. C. Haselton.

Ans. J. C. Haselton's private accounts are kept separate on the Etna mine books.

Quest. What was the price of the coke when attached? What allowed by sheriff or estimate by him, and what you were selling it at?

Ans. We were selling coke at that time at 17 cts. per bushel. The sheriff valued coke when attached at 10 cts. per bush.

Quest. Does coke deteriorate or lessen in value by remaining in a pile as the coke attached does? And, if so, how much is it lessened in value?

Ans. After coke has remained exposed to the weather it will
194 not sell for as much as when fresh; we usually have had to make a discount of from 2½ to 4 cts. per bushel for any length of time. It lessens in value more in the first six months than afterward.

Quest. Can you give the costs of piling up coke, as the coke is piled, constituting the 25,000 bushels kept on hand?

Ans. It would probably cost half a cent per bush.

Quest. Is the space for piling coke one that is prepared for the purpose, and limited?

Ans. Our space for stacking coke is limited, and the ground is leveled for that purpose.

Quest. What is the cost of loading coke on the cars?

Ans. When it is close to the road, so that we can load without forking but once, it can be loaded for 20 cts. per 100 bushels, and if away

from the road, increases according to the distance; every forking requires 20 cts. per 100 bushels.

Quest. Is the pile of coke kept there under the attachment a money inconvenience; &, if so, to what extent?

Ans. It costs us now nearly $11.50 per day to go over or around it with coke.

Quest. Has such been the costs since the attachment?

195 Ans. It has not been so much as that all of the time, but it has always been in the way, on an average of one dollar a day inconvenience.

Quest. Where is Furness?

Ans. Boston, Mass.

Quest. You state that Roope & yourself were requested by Haselton to estimate the value of the goods attached. Had the sheriff any parties on his behalf for that purpose, &, if so, who were they?

Ans. No one but Roope & myself valued the goods.

Quest. Have you a copy of the list of goods attached? If so, you will file the same as Exhibit A to this deposition.

Ans. I have a copy of goods attached, and file the same as Exhibit A to this deposition.

Quest. In making your appraisement or putting the value upon the goods, were the values upon each separate piece or article? And you will also state how they were valued, at the selling prices or otherwise.

Ans. Each separate article was valued and at what we considered their market value here, and that value had nothing to do with selling price, as I have already stated. The articles at their selling price amounted to considerably more.

D. B. PILLSBURY.

196 Sworn to & subscribed before me this Feb. 22, 1879.

R. M. BARTON, JR.

STATE OF TENNESSEE,

Hamilton County, District of E. Tennessee:

The foregoing depositions of A. C. Eaton and D. B. Pillsbury have been taken on notice, as stated in the caption. The taking of said depositions was continued from day to day by agreement of the parties and their attorneys to suit their mutual convenience; the answers were reduced to writing by the witness in the presence of the attorneys for both parties, except when by their consent the witness was permitted to go without the presence of said parties or their attorneys. I further certify that I am not of kin nor counsel to either party, nor interested in the event of the suit, though my partner was at one time temporarily employed by the complainant to argue a motion or demurrer, but our connection with the case has ceased for some time. The depositions were sworn to and subscribed before me, after which by consent were placed in the hands of one of the defendants for the leave to write ex-

197 ceptions to the same, and were by him returned, and have not since been out of my possession or control, and they have not been altered since taking.

[SEAL.] R. M. BARTON, JR.,

Commissioner of the Circuit Court of the United States for the Eastern District of Tennessee.

Deposition of A. C. Eaton, 6,000 words, at 20c. per folio, $12.00. Deposition of D. B. Pillsbury, 7,300 words, 20c. per folio, $14.60; express, 25c.=$26.85. Exhibit A to dep. of D. B. Pillsbury, 35 fo., at 20, $7.00 =$33.85. Correct. R. M. Barton, jr., U. S. com.

Exhibit A to Pillsbury's deposition.

Exhibit A to D. B. Pillsbury' deposition.

ETNA MINES, *Nov.* 7, 1877.

Account of stock taken by S. H. Alexander and S. B. Burnett, deputies of T. B. Hall, sheriff of Marion Co., Tenn.:

DRUGS & STATIONERY.

½	doz. Davies' Arithmetic.
1½	" F'st Readers.
198	2 1/12 English grammars.
4½	writing books.
5/12	McG. High School Readers.
½	" Fifth " "
1/12	" Webster's Dictionary.
3/12	" Quack'bosh' Composition.
3/12	" McG. 3d Readers.
½	doz. Second "
½	" Mitchell' Geo.
½	great gro. pencils.
1	" " pen-holders.
7/12	" slates.
3	boxes medallion pens.
3	" bot. ink.
½	" slates (school).
1	ream Oxford cap paper.
½	" foolscap "
3	pass-books.
3	balls chalk.
4	lbs. borax.
60	" copperas.
7	" red ochre.
6	" borax.
8	" Paris green.
1½	" Senna leaves.
1½	" emory dust.
1	" snake-root.
3	" glue.
199	1/12 doz. blue mass.
8/12	" Thompson's eye-water.
480	gr's quinine.
8	bot. sp'ts nitre.
1½	doz. Mustang Lin.
1 7/12	" Simmonds' Liver R.
1 10/12	" Tripoli soap.
16	ozs. mercurial oint.
½	doz. Mustang Lin.
2	" Cox' hive syrup.
2	" paregoric.
1½	" laudanum.
2	bot. paregoric.
5	" syrup squills.
1	" Eureka Compound.
16	ozs. gum kino.
6	grains chloride gold.
4⅔	doz. aniline.
4/12	" Monteith Geog.
5 1/12	" Webster's Spellers.
2	doz. glass vials.
1	wire castor.
2	lbs. camomile leaves.
4	" canary seed.
1	" camphor.
2	" composition powders.
3	" powders.
12	oz. syrup squills.
1½	pint' tobacco flavoring.
23	bot. specific, Harter.
2½	lbs. muriatic acid.
4	ozs. citric acid.
½	p't prickly ash.
1	lb. corrosive sublimate.
¼	" yellow root.
1	bot. Ayres' Sarsaparilla.
3½	doz. Godfrey's Cordial.
4½	" G. & S. Teething Syrup.
4	lbs. alum.
½	doz. Harter's Syrup.
3	" lemon extract.
2	" vanilla "
1½	" peppermint essence.
1½	" magnesia.
1 10/12	" willow charcoal.
1 1/12	" bottles Nos. 1.
1/12	" " " 2.
1 10/12	" Bateman's Drops.
⅛	" Holloway's Oint.
1½	" calomel, 100 gr.
7/12	" pills.
240	grs. calomel.
1 10/12	doz. horse powders.
1	pt. ammonia.
20	bot. castor oil.
1	lb. glycerine.
1 10/12	doz. worm candy.
1	box hair dye.
1	bot. essence lemon.
1	oz. bry's acid.
½	" prussic acid.
½	" carbolic acid.
1 3/12	doz. Jamaica ginger.
4	bot. Perry Davis' Pain-killer.
1 3/12	doz. sweet oil, small.
1/12	" " "

GROCERIES & MEDICINES

39	doz. boxes blueing.
9/12	" sweet oil.
7/12	" sp'ts turpentine.
1/12	" castor oil.
1	" McLain's Worm Candy.
9	" Demorille's pills.
22	" Holloway's "
36	" liver "
42	" Cook's "
23	" Harter's "

2 3/12 " Cook's pills.
1 5/12 " Wright's "
1 9/12 " McLain's "
3 " Schenck's "
23 boxes Ayres' pills.
200 1 gal. turpentine.
1 q't alcohol.
2 jugs.
2 tin cans.
2 " "
9 large bottles.
5 glass jars.
4 small glass jars.
8 lbs. Castile soap.
3 1/2 doz. toilet "
2 10/12 " " "
5 lbs. Castile "
6 " raisins.
2 white jars.
23 bars toilet soap.
30 lbs. sulphur.
2 gal. alcohol.
12 " Baker Cocoa.
4 " pummice-stone.
7 " alum.
65 " salts.
1 bot. juniper.
1 " prickly ash.
1/2 " blood-root.
1 q't acetic acid.
1 lb. lobelia.
2 " *usa usa.*
1 " cit. oint.
1 " red paint.
6 empty bottles.

GROCERIES.

1 doz. b'x' codfish.
21 cans squash.
17 " peaches.
16 " clams.
4 " "
1 " peaches.
8 " pears.
2 bot. Wor. Sauce.
26 cans beans.
15 " corn.
1 " lobsters.
9 boxes table salt.
3 " sardines.
12 " Baker's Cocoa,
201 5 " sea-moss.
3 1/3 doz. box Cayenne pepper.
1 mouse-trap.
3 whitewash-brushes.
5 shoe-brushes.
1 " "
2 " "
55 bls. sugar, C. C.
200 " rice.
3 bars soap.
8 1/2 lbs. citron.
20 " fine-cut tobacco.
131 " fancy crackers,
6 1/2 " figs.
1/2 " nutmeg.
1/4 " mace.
110 " tobacco.
5 1/3 doz. shoe-blacking.
1 box salts.
5 lbs. tobacco.
10 " gelatine.
7 papers chocolate.
18 lbs. corn-starch.
2 " canary seed.
25 " papers ginger.
22 boxes G. D. caps.
17 " W. P. "
1 1/2 lbs. bl'k tea.
1/2 " sago.
3 1/2 " tapioca.
25 cans sago & mustard.
15 " baking powders.
19 papers stove-polish.
1 1/2 lbs. cloves.
77 " stick candy.
40 1/2 " starch.
4 1/2 " dried currents.
115 " cracked wheat.
26 " tapioca.
13 " maple sugar.
10 candy jars.
7 1/2 " indigo.
" " washing-soda.
2 lbs. gun-tubes.
6 " bees-wax.
2 " madder.
48 1/2 " Bonner twist tube.
37 " bl'k tea.
2 doz yeast-powder.
20 lbs. maccaroni.
15 " citron.
1 bottle brandy peaches.
18 lbs. G. sugar.

QUEENSWARE.

4 potato-dishes.
8 platters.
15 water-pitchers.
17 cream "
4 lantern-globes.
15 lamp-chimneys.
9 molasses pitchers.
6 " "
19 sugar-bowls.
7 set W. G. ware-plates.
4 5/6 " " " "
2 1/6 " " " "
9 1/2 " " " feans.
1 bowl & pitcher.
1 lamp-shade.
2 salt s'l'rs.
1 pepper-box.

HARDWARE.

202 1 box locks, butts, & screws, &c.
6 col. chamber-pots.
9 white " "
1 doz. glass pint jars.
1 box saw-handles, &c.
2 augur "
14 pr. butts.
83 sheets sand-paper.
19 " emery "
8 set door-springs.
40½ lbs. shot.
8 shovel-handles.
5½ doz. strap-hinges.
11 padlocks, hinges, door-handles.
11 lbs. lead.
14 set ⅓ & 2 bed castors.
9 gun-locks.
4 mill-files.
4 rat-tail files.
21 saw' "
15 doz. lamp-wicks.
2 door-bolts.
6 lamp-burners.
2 whet-stones.
5 lbs. horse-shoe nails.
9 miner's lamp'.
50 f't fuse.
203 17 shaving-brushes.
6 W. & Butche's' razors.
1 Emerson strap.
½ g. coat & hat hooks.
11 gun-cylinders.
1 doz. shaving-brushes.
½ gr. blind-hooks.
2 coffin-handles.
2 Aine's locks.
33 coffin-screws.
2 padlocks.
8 forks.
10 mill-files.
10 ft. fuse.
8 yds. dress-facing.
2 " buff chamly.
5 doz. Turkey red h'ks.
1 mill-file.
2 augur'.
1 drawing-knife.
2 gimlets.
4⅜ doz. paper tacks.
1 box cartridges.
½ " peg nails.
½ doz. scissors.
11 candle-holders.
1⅒ bars hinges.
32 coffin tacks.
3½ doz. German-silver spoons.
2½ " spoons.
2½ set knives & forks.
3 pad locks.
60 coffin-screws.
6 J. R. Tony razors.
9 W. & B. "
2 pr. shears.
80 coffin-screws.
8 pr. scissors.
5 awl-holders.
½ doz. Howard R. straps.
½ " Emerson " "
⅓ " " " "
11 lbs. powder
1 doz. awl-handles.
4 lbs. hemp twine.
50 ft. glass.
2 ax-handles.
1 pk. shoepegs.
1 W. & B. razor.
2 " " "
8 set bed-castors.
20 lamp-chimneys.
4 doz. wicks.
½ " burners.

TINWARE.

5 2-gal. tin pails.
11 2 lb. buckets.
7 6 " "
9 1-pt. "
6 dinner "
10 2-qt. coffee-pots.
23 " "
20 2-qt. oil-cans.
⅓ q. wash-basins.
½ " " "
13 dish-pans.
27 pil'-plates.
55 1-pt oil-cans.
67 small pt. pans.
7 meat-cutters.
204 3 cow-bells.
22 tin-cups.
1 " bucket.
26 candlesticks.
1 1-pt. oil-can.
8 tin pepper-boxes.
9 nutmeg-graters.
1 corn-popper.
2 brooms
6 fire-pokers.
1 pr. tongs.
5 lanterns & globes.
2 churn-handles.
7 milch-strainers.
49 lamp-chimneys.
6 brass lamps.
2 glass "
1 fly-trap.
1 doz. muffin-rings.

BOOTS & SHOES.

26 pr. men's B c'lf pegged shoes.
6 " " kip " "
6 " " " hob-nail "
1 " slippers.

8 misses' calf "
24 pr. pebble grain "
21 " chil. calf "
19 " boys' calf "
42 " chil. kid "
15 " " button "
8 " copper-tip "
14 " buckle Alexis "
2 " c'lf small box-toe "
10 " plow "
38 " boys' brog's "
30 " men's " "
34 " " " "
35 " " " single-sole "

1 " gent's c'lf boots.
500 leather shoe-strings.
7 " boys' kip boots.
3 " gent's sewed "
3 pr. boys' c'lf boots.
9 " " kip pegged.
9 " men's c'lf boots s.
8 " " " " p.
10 " " " "
9 " " kip
24 " kip brog's.
13 " " "
36 women's kip polka.
36 pr. " B c'lf.

DRY GOODS.

2 blue Dunnin shirts.
3 pr. rubber leggings.
1 " blankets.
1 coat.
1 doz. neg. shirts, No. 440.
1 " " " " 297.
$\frac{8}{12}$ " " " " 149.
$\frac{0}{12}$ " " " " 212.
1 " " " " 515.
205 1 neglia shirt.
2 " " No. 249.
6 blue rib. un'shirts.
45 marino shirts.
8 " drawers.
32 " " art. col's.
4 wool ribb., blue.
3 " " "
12 red flannel.
6 ladies' vests, white.
12 " "
10 white quilts.
1 ladies' lin. suit.
1 overskirt.
1 ladies' suit.
4 " "
4 Cardigan jackets.
13 " "
7 white Minn., men's.
36 Metropolitan shirts.
14 American yoke.
2 writing-desks.
4 portfolios.
14 sheets cotton wadding.
1 doz. lad. hoop-skirts.
4 boxes h'k'fs, 2 doz.
26 ladies' "
41 pr. suspenders.
206 8 pr. ladies' wool rib.
7 " " "
39 " papers pins.
3 boxes bl'k pins.
12 " pants' buttons.
252 lin. braid.
58 cotton tape.
16 gents' wool coats.
5 cotton "
3 W. P. "
5 linen "
8 boys' wool "
10 gents' wool vests.
3 men's cotton vests.
6 " " pants.
1 " wool "

6 wool "
2 w. p. " " 412.
11 red flannel shirts.
6 " " "
5 velvet-breast shirts.
11 embroidered.
1 doz. shirsts, No. 522.
1 check flannel.

9 lbs. bl'k linen thread.
70 spools silk.
180 papers hairpins.
177 violin-strings.
3 pr. gloves, ladies.
4 tobacco-pouches.
7 tin spectacle-cases.
12 leather " "
1 pr. spectacles.
64 yds. ribbon.
72 white cotton lace.
93 tape cot. trimming.
141 yds. cot. edging.
80 " lace.
90 bl'k coffin trimming.
12 pcs. velvet ribbon.
5 yds. " "
86 pieces worsted braid.
25½ yds. alapaca.
160 " rubber cord.
52 " col. cords & f.
3 doz. ladies' cotton hose.
5½ " " col. "
36 pr. " "
48 " gent's B. "
36 " ladies' rib. "
19 " chil. "
4 " merino "
4 pr. buck gloves.
1½ gro. thimbles.
92 "
3 doz. white wax.
4 pr. merino chil. hose.
12 doz. steel buttons.
1½ gro. horn coat-buttons.
½ doz. bot. cologne.
3 gro. hooks & eyes.
14 pr. buck mittens.
17 balls welting cord.
5 pr. ladies' white gloves.
23⅓ doz. fish-lines.
6 gent's knit gloves.
13 yds. belt ribbon.
53 " fancy "

1 pr. linen pants.
1 " bl'k "
" " cotton "
1 boy's wool "
6 white wool h'ts.
4 grey "
9 men's " as't.
1 boys' "
5 glazed caps.
9 plush "
1 pr. buck gloves.
5 " dogskin "
207 3 doz. misses' hose.
9 pr. striped "
10 " " "
23 gent's linen bosoms.
10 " cotton "
2 pr. chil. hose.
1 cotton shirt.
13 pr. gent's wool gloves.
6 " buck mittens.
4 " dogskin "
24 " buck "
" " white cotton "
12 " ladies' Berlin lined.
6 " gent's gloves.
7 " sheepskin gloves.
1 " buck "
12 " " mittens.
13 wom's hoods.
5 pr. w'm state corsets.
4 " bridal "
3 " knit gloves.
113 yds. blue Am. drill.
258 " Great Falls E. cotton.
93¼ " Pepper " "
357¼ " Atlantic "
147 " Augusta A "
44 " Osenburg.
79½ " Amoskeag drills.
208 6 lbs. working.
5 gro. shoe-strings.
3 yds. blue W. P.
2 " white fleece.
15½ " spotted "
41 " blue mixed.
35¼ " " fleece.
18¾ " " "
167 boxes Cuba collar paper.
60 " " "
24 linen "
45¾ y'rds grey serge.
56¼ " striped poplin.
133 " brown "
42½ " drab "
58 " O. C. M. suiting.
49½ " bl'k coat alapaca.
49¼ " Pacific Mills.
54 " Naumking State satter.
51 " " brown "
23 " bl'k velvetine.
31 " curtain lace.
68 " Cumberland linsey.
102 " Adriatic linsey.
68 " Cumberland "
46 " Adriatic "
49½ " Orinoka
11¼ " White Rock "
209 48 yds. bl'k alapaca.
50 " blue "
8¼ " white "
120 " tape "
80 " fancy "
27 " jeans.
26 " "
7 pr. ladies' striped wool hose.
8 " " " "
3½ doz. chil. col. wool.
3 pr. mittens.
12 " gent's fancy col. hose.
8 merino "
4 boys' blue wool "
30 ys. Somerset cant. flannel.
3¼ yds. Domestic.
45 " Amoskeag tick.
60¾ " Thorndike "
15 " Turkey red damask.
19¼ " loom dice L.
2¾ " blue linen damask.
14 huck towels.
12 linen "
10 bath "
31 linen "
4½ yds, m'r blue Tot. lin.
27 " cotton check.
3 wool table covers.
1 white quilt.
3 col. "
3 Turkey red tab. covers.
15 brown linen "
7 blue " "
11⅜ yds. crash.
4 pr. Dufurst socks.
50 yds. denim.
4¼ " Shippel "
20 " white linsey.
6 " " velvetine.
2 umbrellas.
4 "
3½ cotton knitting.
62 yd. White Rock linsey.
52 yds. red & bl'k checked alapaca.
324 " calico.
187 " "
79½ " blue & green calico.
204½ " cambric.
125 " American gingham.
52¾ " blue & green plaid.
136 " solid col. calico.
23 " col'd blue & green plaid.
3 " buff cambric.
40 " linsey.
52 " striped poplin.
24 " knickerbocker.
4½ " bl'k alapaca.
12 " brown silicia.
20 " drab "
382 " sinnot cambric.
29 " blue wool dela'ne.
5 " red "
12½ " tycoon rep.
6 " wool plaid.
12½ " blue & white "
460½ " cotton plaid.
29¾ " striped poplin.
54 " checked "
58 " C. C. M. suiting.
48 " red alapaca.
3 doz. gent's scarf-pins.
2 " ladies' breast "

9 chil. knit caps.
1 ladies' parasol.
22 " hats (as't).
4 " "
11 brierwood pipe'.
3 merschaum "
4 brierwood "
18 imitation cigar "
10 pipes.
2 apple wood "
14 yds. bl'k lace.
9 hair-brushes.
6 silk h'k'fs.
8 harmonics.
9 "
46 gent's bows.
30 yds. blue & brown berage.
22 bl'k neckties.
8 ladies' ties.
11 boxes lily white.
11 pr. ladies' garters.
9 steel " belts.
6 sleeve elastics.
9 steel garters.
17 ladies' linen collars.
35 boxes wax.
210 26 yds. Jap. poplin.
1¾ " cot. lace.
21 " striped "
6½ " Jap. "
44¼ " white brilliant.
2 " " Swiss muslin.
2 " Victoria lawn.
7½ " check nansook.
12 " white tarl'ton.
6¼ " Swiss muslin.
1¾ " " "
14 " jackonett.
10 looking-glasses.
16 chucks (as't).
33 spools linen thread.
1 key-ring.
21 gent's watch-chains.
11 " " "
11 collar-buttons.
25 set gent's studs.
24 " sleeve-buttons.
7 " ear dress.
20 " " "
8 watch-chains.
2 gent's pins.
12 watch-keys.
3 gent's pins.
16 ladies' pocket-books.
3⅓ " bu'k combs.
⅒ fine combs.
3½ doz. cream "
10 " watch-keys.
1 " " "
13 ladies' belts (covers).
1 doz. " " "
35 pr. gent's rib ½-hose.
42 " " " "
1 " " cotton "
5 ladies' white skirts.
6¾ yds. skirting.
1 ladies' white skirt.
7 fancy shell-boxes.
128 jew's-harps.
4 willow baskets.
53 neck-bows.
195 doz. spool cotton.
12 yds. brown twine.
125 doz. agate buttons.
132 " pearl agate.
12 " best pearl.
1 box odd buttons.
22 doz. silk "
1 blue shawl.
2 blue table-covers.
2 red table-covers.
25 yds. plaid check.

I do hereby certify that this is a true list of the goods attached and removed by T. P. Hall, sheriff of Marian County, in the case of Mrs. Gaskill vs. J. C. Haselton.
Nov. 15, 1877.

THOS. P. HALL, *She'ff.*
By S. B. BURNETT.

23 cakes toilet soap.
2 glass jars.
1 bottle blue mass.
1 H. razor.
15 boxes lige.
6 pr. merino drawers.
36 yds. bl'k lace.
1 bl'k alp. coat, No. 1559.
15 doz. horn coat-buttons.
20 " white & smoked pearl.
1 gross pants buttons.
25 doz. brass buttons.
9 " " "
211 2 p'r blue merino hose.
15 y'ds bl'k & white check flannel.

52¾ y'ds poplin.
30½ y'ds blue mixed flannel.
1 round comb.
1 blue sha'le.
1½ doz. First Day Readers.

S. B. BURNETT.

Corrected by James Roope & W. F.
Bill of cost of ex. 35 fo. at 20=$7.00.
(Endorsed:) No. 651. Depositions of A. C. Eaton & D. B. Pillsbury in V. A. Gaskill & wife vs. J. C. Haselton et al. Filed Feb'y 27th, 1879. A. R. Humes, cl'rk, Marian County. Refiled 1879.

Notice for new security.

In chancery at Chattanooga, Tenn., commenced at Chattanooga, now in the United States circuit court at Knoxville, Tenn.

V. A. GASKILL & WIFE ET ALS.
vs.
J. C. HASELTON. } No. 1984.

Mrs. H. L. GASKILL: We are securities upon your prosecution bond & attachment & injunction bond in this case, and hereby give you
212 notice that on the first day of next term of this court, to wit, the circuit of the United States, at Tenn. we will move for a rule upon you for counter security to indemnify us against our liability as such sureties, that we may be released from such suretyship as prescribed in sec. 3665 of the code.

V. A. GASKILL.
C. R. GASKILL.

CHATTANOOGA, TENN., J, 1879.

(Endorsed:) Original. Notice for new security. V. A. Gaskill & wife et als. vs. J. C. Haselton. No. 1984. July 8, 1879.
I acknowledge service of the within notice and receipt of copy.
H. L. GASKILL.
Filed July 9, 1879. A. R. Humes, U. S. cir. c't cl'k.

Report of Receiver Hall.

V. A. GASKILL & WIFE
vs.
JAS. C. HASELTON ET AL. } No. 651.

In pursuance of an order issued by the United States circuit court for the eastern district of Tennessee, in said cause, on the 24th day of Feb'y, 1879, directing me to sell at public sale the goods, wares,
213 and merchandise attached in this cause, and now in my custody, and report to the next regular term of this court after said sale, In compliance with said order, after advertising the time and terms of said sale in the Valley Herald, a newspaper published in the town of Jaspar, Marian Co., Tenn., and in the Chattanooga Commercial, a newspaper published in Chattanooga, Hamilton Co., Tenn., I did on the 20th day of March, 1879, proceed to sell said goods at auction in the town

of Jaspar, Tenn., on such terms as set forth in said order of sale, and said sale continued from day to day until completed. I herewith report gross amount of sales and expenses.

Gross am't of sales		$2,067 09
Am't of notes	$1,358 99	
" " cash	646 00	
" " error to bal	62 10	

Am't of expenses, by am't for invoicing, freights, &c., as reported heretofore	$95 05
Storage, house-rent, &c	84 00
To auctioneer	33 00
214 G. F. Smith, clerk	46 00
P. T. Rankin, "	50 00
D. E. Rankin, helper	45 00
F. V. Brown, att'y fee	10 00

Am't due T. P. Hall, receiver in said cause, respectfully submitted to the court; all of which is respectively submitted.

Jaspar, July 16th, 1879.

THO'S P. HALL, *Receiver.*

Attest:
P. T. RANKIN,
G. F. SMITH.

(Endorsed:) No. 651. V. A. Gaskill & wife vs. J. C. Haselton et al. Report of Receiver Hall of sales of merchandise, &c. Filed July 18, 1879. A. R. Humes, clerk.

Deposition of J. C. Haselton.

In Federal court at Knoxville, cause removed from Marian County chancery court.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON & OTHERS.

Deposition of J. C. Haselton, defendant, taken by consent of parties and upon the agreement that complainants may except to any
215 question not legally propounded, or answers given by the witnesses at the end of this deposition or at any other time allowed by law, or for any other legal reason except as to notice.

The compl'ts reserve the right to make objections & exceptions to this deposition for any legal cause (except as to notice) within any time & for any reason allowed by law.

Quest. 1. State in what manner and what connection you claim the SE. ¼ of sec. 3, mentioned in your answer.

Ans. In January, 1859, in connection with J. Holmes Agnew, I purchased an undivided half of southeast quarter of section three (3) and other lands as will be shown by the deed itself, when withdrawn from the courts in another case, or a copy of same. J. Holmes Agnew conveyed his interest to his son, Sam'l J. Agnew, from whom I purchased, as per deed recorded, copies of which will be produced if required. In 1860, Erasmus Alley, from whom we purchased, filed his bill to enforce

his vendor's lien against said Agnew & myself, in which was embraced a portion of said land described in said Alley's deed. Said cause was appealed to the supreme court. A certified transcript will be
216 filed as evidence in this cause, and from which it will be seen said southeast quarter of section three (3) is not included either in the bill, advertisement, decree of sale, or confirmation of sale, as shown by my answer. In the spring of 1867, sale took place of the property embraced in said Alley's bill. By an examination of the registrating the said All'y deed, it was discovered that the registrator had omitted to copy the description properly and had left out the SE. qr. of (3), third section. The original deed had been mislaid. A bill was filed to correct and reform the deed as descriptions, pending which the deed was found; thus ending that suit, and deed registered, as will be shown by the register's endorsements.

At said vendor's sale Mrs. H. L. Whiteside, now Mrs. H. L. Gaskill, complainant, became the purchaser as a creditor of said Alley, the vendor, bidding the sum of five thousand three hundred & fifty dollars ($5,350), leaving a balance due the vendor Ally on the decree. Under this sale Mrs. Gaskill improperly & unlawfully took possession of the said southeast quarter of section three (3). In connection with
217 other lands which she owned, she leased this SE. qr. of section three (3) to Badge & Eaton, for mining purposes. Badge & Eaton were occupying the premises under an agreement made with me, for myself and for the other owners, Boyce, Cravens, & the Whiteside estate.

On his assurance that the land belonged to her, and on her reducing the rental for the use of the mines, they attorned to her. When this change was made known to me, I most earnestly protested against payment being made to any one but me, and notified Badge & Eaton that they must pay me rent according to my contract with them, and that they must report to me the number of bushels of coal mined, & in no way have I concurred in the said lease, but on the other hand have instructed my attorney to take such legal steps as not by my indifference or neglect to allow her acquire any rights in southeast quarter, section (3) three; Erasmus Alley to secure the balance of the purchase money, which was not satisfied by sale to Mrs. Gaskill, levied on remainder of the property, some six hundred acres, including the said southeast quarter of section three (3). The lots were sold at public auction separately, and I became the purchaser, paying for all
218 about twelve hundred ($1,200) dollars, which satisfied the vendor's lien, which will be shown by the sheriff's deed.

Badge & Eaton continued to occupy and work the mines, paying rent to her without a written lease until June 1, 1870, when she leased to them a section of land for mining purposes and the privilege of cutting timber on the surrounding section 2, as will appear by said lease. In this lease was embraced the southeast quarter of section three (3) and other land which she did not control. They continued to pay rents to her although they made returns to me from time to time of the product of the mines. This continued until June 1, 1875, when the lease expired.

In January, 1874, I purchased of Boyce & Cravens their three-eig'ths (⅜) interest, and in December, 1874, I purchased the Whiteside one-eighth interest in the said southeast quarter of section three (3). Mrs. Whiteside secured all the rents up to June 1, 1875. The firm of Badge & Eaton failed in November, 1874, but held possession of the mines until July 1st, 1875, one month after the expiration of the lease, when I

took possession without hinderance. In November, 1874, I com-
219 menced suit against V. A. Gaskill & wife and Badge & Eaton, asking for a receiver to be appointed by the court to protect the property and collect the rents, as will be shown by copy of complaint.

To secure the rents due me from the time of my purchase from Boyce & Cravens, and to enable the said Badge & Eaton to continue operating the mines, and at their earnest solicitation, they being pressed by their creditors, and having made a written agreement, as will be seen by Exhibit B, A. C. Eaton's deposition, I endorsed their notes for twenty-five hundred dollars ($2,500), and took as security a deed of trust of their personal property for thirty-five hundred dollars ($3,500). The thousand dollars ($1,000) the excess of the endorsement was to secure the past-due rents on the Boyce & Cravens' interest that been sold to me, and the rent that would shortly become due. On receiving the deed of trust the application of receiver was withdrawn.

I paid all the notes, and when I tried to enforce the deed of trust the trustee was enjoined by V. A. Gaskill & wife, who claimed to
220 hold everything on the premises belonging to Badge & Eaton by virtue of their said lease, and prosecuted the suit against Badge & Eaton to collect all the rents.

Badge & Eaton refused to pay them rents any longer, as they had become convinced V. A. Gaskill & wife, or either of them, were not owners of the land, but the chancellor decided that the tenant could not question the landlord's title, so they were given judgment for all the rents, reserving nothing for my share of the rents, and took all or nearly all the property, leaving me without security or payment for nearly all of the twenty-five hundred dollars ($2,500) I had paid for Badge & Eaton. From this decission of the chancellor they have appealed.

September 1st, 1875, I made a bona-fide sale to the Bartow Iron Company of Georgia of the southeast quarter of section three (3), and they entered into possession, which ended all my interest in southeast quarter of the said section three (3), except as a stockholder in the Bartow Iron Co. To state more explicitly my connection with and interest claimed in said section will state that the title of one undivided half was received from Ally & Agnew, three-eighths
221 purchased from Boyce & Cravens & the remaining eighth at judicial sale from the Whiteside estate, making me the owner of the entire SE. qr. of sec. 3 mentioned in my answer in this suit.

Quest. 2. From your answer you will please show what rentals the several parties are entitled. State the respective interests and rentals belonging thereto in said SE. ¼ of sec. 3 or on any other lands which you will designate under their lease, or which were mined by Badge & Eaton, and rentals paid by them to complainants.

Ans. Mrs. Whiteside had no interest in her own right in any coal rentals for coal taken from SE. qr. of section three (3) up to Jan'y, 1874; I owned one undivided half by purchase from Ally & Agnew; Boyce & Cravens owned an undivided (⅜) three-eighths part and collected their own rents to the time of the sale of their interest to me in Jan'y, 1874; the Whiteside estate owned on' (⅛) eighth part until Dec., 1874. Mrs. Whiteside, now Mrs. Gaskill, was entitled, as executrix, to (⅛) one-eighth of the am't collected up to Dec., 1874, and I am entitled
to (⅞) seven-eighths. After Dec., 1874, to June 1, 1875, I am enti-
222 tled to all the rents. From the returns made to me, from occasional examinations of the mines, from testimony given in former suits in my hearing, and from frequent consultations with the different

members of the firm of Badge & Eaton, and other testimony which may not be fully reliable, I claim that out by them thirty thousand tons (30,000) or (840,000) eighty hundred & forty thousand bushels have been taken and paid for to Mrs. Gaskill. This, at one cent a bushel, will amount to eight thousand four hundred dollars, seven-eighths (⅞) of which belongs to me, and is ($7,350) seven thousand three hundred & fifty dollars; (⅛) one-eighth would belong to the Whiteside estate, say $1,050 (ten hundred & fifty dollars). This would be the respective interests in the rents of the SE. qr. of sect. 3 if the Whiteside interest had continued to the end of the lease, but it became my property six months before the so-called lease to Badge & Eaton expired.

Badge & Eaton also mined on the northwest quarter of section (11) eleven, as near as I can ascertain, eight thousand tons or (224,000 bushels) two hundred & twenty-four thousand bushels, and price
223 for it to Mrs. Gaskill, at the rate of one cent. per bushel, amounting to twenty-two hundred & forty dollars. This quarter section was owned, one-quarter by the Whiteside estate and the other three-quarters by Boyce & Cravens. By purchase of Boyce and Cravens in Jan'y, 1874, I became possessed of their three-quarter interest, with all rent due from it. The Whiteside interest would be ($560) five hundred & sixty dollars, and my interest is $1,680 (sixteen hundred & eighty dollars.

Quest. 3. State what you may know of the attachments levied upon property in this cause, and any actual damage you may have sustained in consequence thereof?

Ans. On the 19th of October, 1877, attachment was made by the sheriff of Marian County on coke on yard estimated at fifteen thousand bushels (15,000), and on all merchandise in my store at Etna coal mines, some four or five miles from the Vulcan mines. The sheriff shut up the store, took the key, and put in a keeper. He retained possession of the store until November 15th, 1877, say, twenty-seven days (27). The sheriff released the attachment on the coke on the yard, and made a second attachment on the pile of coke attached in a former
224 suit. While the attachment was on the coke on coke-yard it hindered and delayed our business very much employment extra labor in forking the new coke made, and keeping us from the proper use of the coke-yard. I estimate this damage or extra labor at not less than one cent per bushel, & the average shipment for that time would be twenty car-loads of ten hundred bushels each, say 20 cars, or 10,000 bushels, making a damage of one hundred dollars in extra labor. Rental of ground would be worth at least one dollar a day, or $27.00. The estimated value of the coke is not less than $1,500; int. 27 days, $7.00. Thus, as shown, the actual damage, to say nothing about any depreciation in price or quality while held by sheriff, is $134.00. When the merchandise in the store was attached I was employing one hundred & fifty men & boys; many of them had families, and were dependent on the store for their daily supplies, there being no other store in the vicinity. The merchandise was such as is required for daily use. Although the sheriff was requested to remove the goods immediately after attachment, he utterly disregarded
225 the request, and kept the store closed twenty-seven days (27). Our sales for the same time before the attachment, and the same time the previous year, amounted to between three & four thousand dollars ($3,000 or $4,000), and paid a profit of from eight to nine hundred dollars ($800 to 900).

I have examined the invoice of the goods for which the sheriff gave

a receipt and took away; also the appraisal made by Messrs. Roope & Pillsbury. I estimate the real value of the goods at not less than four thousand five hundred dollars ($4,500), but they would have yielded me a much larger sum had they not been attached. I paid my storekeeper, Mr. W. F. Furness, seventy-four & $\frac{79}{100}$ dollars ($74.79); Peter Beadon, jr., clerk, $37.39 (thirty-seven & $\frac{39}{100}$ dollars), and the porter twenty-seven ($27.00) dollars for the twenty-seven days the store was in the hands of the sheriff. The rent of the store cannot be estimated at less than one dollar per day, or twenty-seven dollars. The above, with interest added, is the actual loss or damage to me, without any mention of the damage by interruption to my general business and injury to my credit with my own men and my creditors.

226 Quest. 4. When did you become president of Bartow Iron Company; before or after the sale of the Vulcan mines to the said company?

Ans. After the sale to them of the Vulcan mines.

Examination by sol. for complainants:

Intg. 1. Did you not dismiss the suit you brought of 1874; and, if so, when? Did you not bring an action of ejectment about SE. qr. of sec. 3 & other lands, & file a bill in chancery in aid of your own ejectment suit in Marian County, and afterward dismiss them all, together with your bill for a receiver?

Ans. The court records will show all suits commenced and when & how disposed of; but delay and time of commencing and final disposition of them are not in my mind, only as I have examined and inserted in my examination-in-chief, to which I allude as part of this answer.

Intg. 2. Have you not dismissed all the above cases referred to in intg. 1, just above?

Ans. Litigations have been going on with these parties since 1867, and suits to the number of from twenty-five to thirty have been
227 commenced, and are now in court, or have been disposed of in some way, and I will not trust to my memory as to the disposition of them, but refer to the records of the court, which will not make a mistake.

Intg. 3. Have you any suit now pending in Marian County, Tenn., against complainants involving in any way anything connected with the Vulcan coal mines or the Etna coal mines, either as to real estate or personal property?

Ans. This suit having been removed to the United States court, there are no others. The various and numerous suits mentioned in my answer to question 2 are most of them in Hamilton County, and concerning rents of Etna mines.

Intg. 4. Are you not the same Haselton who was a party to the suit in the supreme court of Tennessee, under the decree of which court complainant H. L. Gaskill claims title to an undivided interest of one-half of the SE. qr. of sec. 3, and an interest in other lands involved in this litigation?

Ans. I do not know of any other person of my name in this sec-
228 tion of country. If I could see the bill I should know, but will not answer from memory. I know she claimed a large amount of land to which she had no title, and this section may have been in the bill, as it was in the lease to Badge-Eaton, with other lands not belonging to her.

Intg. 5. Are you not the same Haselton who was a party to the suit in the supreme court of Tennessee, under the decree of which court

complainant H. L. Gaskill claims title to what is known in this suit as the Ally lands sold by E. Alley to J. C. Haselton and J. Holmes Agnew?

Ans. I am the same Haselton that bought land of E. Ally, jointly with J. Holmes Agnew, and recollect that part of the land was attached and sold, but the SE. qr. of sec. (3) three was not a part of it. The same, bought by Mrs. H. L. Whiteside—section (3), SE. qr.—was sold to satisfy judgment of Ally & bought by me.

Intg. 6. Does not Mrs. Gaskill, formerly Whiteside, claim an interest in the SE. qr. of sec. 3 by virtue of said sale, as well as other lands?

229 Ans. I have never seen or heard of any decree of court that embraced in it my part of section (3) three, or that gave her any title to it. She has equally claimed or leased a large amount of land in the Raccoon Mountains as her own, in which she had little or no real claim. She did by virtue of the sale become the owner of part of the land sold to J. Holmes Agnew and myself by E. Ally, and the decree will designate which they were.

Intg. 7. In the case of V. A. Gaskill & wife vs. Badge & Eaton et als., in the chancery court of Hamilton County, Tenn., were you not made a defendant & did you not answer & did you not appeal in said cause to the supreme court of this State, & is not said appeal pending and undetermined in said supreme court?

Ans. Yes.

Intg. 8. At what date did you become president of the Bartow Iron Company, & have you been president ever since?

Ans. I do not recollect the date, but in the fall after I sold my interest in the Vulcan mines to them; I have continued to be the presi-

230 dent of the Bartow Iron Co. since.

Intg. 9. Did you have any interest in the Bartow Iron Company before your sale to them, if so, what, & how long had you owned that interest?

Ans. I had not.

Intg. 10. How long after your sale before you were elected president of the said company. State as near as you can?

Ans. This question is answered in answer to question eight.

Intg. 11. You say the sale was made in September. Were you elected president of said company in saidSeptember or the following month of October or November? State which month if you can?

Ans. I have answered as well as I recollect, but if important will look up the records and insert the time hereafter.

Intg. 12. Who managed the Vulcan coal property you sold to the Bartow Iron Company, between the time of your *sold*, and the time you was elected president of said company?

Ans. F. J. Stone, who was the manager and treasurer of the

231 Bartow Iron Co., and who employed A. C. Eaton as agent for the company. I never gave the mines any personal management after I was elected president.

Re-examination:

Quest. 2, cross-question, you speak in your answer of 30 or 20 suits. State if you are not confounding the rent suits of the Etna mines with this suit, this deposition and the deposition in that case being taken at the same time.

Ans. I refer to all suits with these parties in this and all other suits. Twenty-one of the suits are for rents of the Etna coal mines.

Quest. 2. State, if you know, the date the ejectment suit in Jaspar was

dismissed. If you cannot, direct a certified copy of the suit to be filed in this cause as evidence of the fact.

Ans. I do not recollect; but after I took possession of the mines in July; will file copy of dismissal.

Recross-examination:

Intg. 1. Have you the original or a copy of an agreement between you & the heirs of the Whiteside estate as to the sale of the coke attached at the Etna mines? If so, will you file the original
232 or a copy & mark it Exhibit , and make it a part of your answer to this question?

Ans. No such agreement has been made & executed.

Intg. 2. Please look upon the paper herewith shown to you, marked Exhibit X, and state whether or not that part of said exhibit which appears in the handwriting of Nash. H. Burt, your att'y in this cause, was or was not submitted to the said Whiteside heirs with your knowledge and consent, and please state how much of said exhibit appears in the handwriting of said Burt.

Ans. I made a sale of the coke I had on hand that was not attached and also took an option from the same parties to deliver the coke attached by V. A. Gaskill & wife, but not originally attached in this suit, if it was agreeable to all parties in interest, and this option I communicated to V. A. Gaskill & wife through my attorney, Nash. H. Burt, esq., and also my willingness to have a sale on the condition mentioned in Exhibit X, in this part of it, written by said Burt, which is all but the sixteen last lines—which were added by pl'ff or their attorneys—and returned

233 EXHIBIT X.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

Cause removed from chancery court at Chattanooga to Federal court at Knoxville.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS.

Cause removed from chancery court at Jaspar to Federal court at Knoxville.

In these above-stated causes certain coke, thirty-thousand bushels, are attached and held under attachment process at the Etna mines, in Marian County. J. C. Haselton now has a prospect to sell the same to the Southern States Coal and Iron and Land Company, Limited, on the following terms: Settlement to be made on the 1st day of the month, after delivery, by taking the notes of said company payable in two months with one month's interest added. Price to be paid for the coke delivered on the cars at the mines (7½) seven and one-half cents per bushel of (40) forty pounds. The cost of putting the coke on cars will be one-
half cent bushel. This cost said Haselton proposes to pay and to
234 take a separate obligation from said company for the same, payable to himself.

It is agreed that said Haselton may effect said sale and that the proceeds the *the* coke at 7 cents—shall be deposited in the First National Bank of Chattanooga, to abide the result of the decree in said causes above mentioned. This sale is in no manner to affect the rights of the parties in said causes or to operate as any estoppel on the part of said Haselton to any right of action or account for damages he may have in consequence of said attachments in said suits. Nor is said Haselton to be held personally liable upon the contract of sale to said company.

Nothing in this agreement shall operate to the prejudice of any right or remedy which V. A. Gaskill & wife may have against J. C. Haselton on account of any matter that has heretofore occurred. It is further agreed that if said note or notes shall not be paid at maturity, W. P. Rathbone shall proceed to collect the same in the name & for
235 the uses of all the parties interested, & that the amount so paid to said bank either with or without suit shall be invested by said Rathbone for the benefit of all the parties interested in 4 per cent. United States bonds & held as above named.

April 18, 1879.

V. A. GASKILL.
H. L. GASKILL.

In my own right & as executrix of J. A. Whiteside, dec'd.
FLORENCE WHITESIDE.

Ans. continued: to me for approval. It was not approved by me and surrendered to V. A. Gaskill, one of the signers. I am delivering my own coke, but no part of the coke under attachment, and this paper has never been accepted or executed by me.

Intg. 3. When did you surrender said Exhibit X to V. A. Gaskill?

Ans. This morning, May 16, 1879.

Intg. 4. Has not the coke attached in this suit been some (a considerable portion) of it sold & delivered for considerable time by you or your agent, & is not the attached coke so much of it missing & the balance so mixed up with coke burned or made at mines since said attachment that you do not really know what was the coke attached?

236 Ans. The coke has all the time been in the hands of the sheriff's keeper, who alone has had control of it, and I presume it is in the yard now; although the operators of the mines have, for the want of other room, been obliged to pile coke on top of the attached coke, and in mixing it some of the identical coke that was attached may have been removed and the other taken its place, as, when once on the pile, no one could identify any more than corn in a bin. The sheriff did not take the coke away after attachment, although notified and requested so to do. I have never had the coke in my control since the attachment, and know of no sale of this identical coke.

Intg. 5. Was not said coke, when attached, at once put under the control of D. B. Pillsbury, your agent at the Etna mines then and now, & has he not had control of said coke from the date of said attachment & do you not know that there was a large quantity of said attached coke in front of the coke ovens, which was sold by said Pillsbury soon after said attachment & the proceeds turned over to you or used at said mines?

Ans. I was not present when the attachment was made either in the suit when the large pile was attached or this suit. It was re-
237 ported to me that the sheriff had attached the coke in front of

the ovens valued at ($1,500) fifteen hundred dollars in this suit in connection with five or six thousand dollars' worth of store goods. I immediately, in writing, notified him to remove both the coke and the store goods. The store goods were kept shut up in the store twenty-seven days before removal; but the sheriff sent word to the keeper, Mr. Milbyam, that the coke in front of the ovens was not attached, but the attachment of coke was a second attachment on the pile attached a year or two before. Mr. Pillsbury was not at once, or for a long time afterwards, keeper. The coke attached in front of ovens was not removed until the sheriff disclaimed having attached, or rather, he said he misunderstood Mrs. Gaskill' instructions, and attached it through mistake when he was instructed to make a second attachment on that attached in another suit. Making and selling coke is a part of my business, and Mr. Pillsbury is the agent of the Etna coal mines. He has had no instructions from me to sell any coke that was attached, & if he has done so it is or was not with my instruction, and I presume any and all alterations, if any have been , have been under
238 the instruction, advice, or consent of the sheriff, whose agent he has been since his appointment, a month or more after the attachment.

Intg. 6. How do you know that the sheriff sent word to Mr. Mulligan that the coke in front of the ovens was not attached?

Ans. I only know it from Mr. Pillsbury' statement, which was reported to me as the sheriff's answer, and Mr. Milligan no longer exercised any control over it.

Intg. 7. Was not the coke in front of the ovens sold after said Pillsbury took control of the coke & by him, & was not the proceeds of said sale, the fifteen hundred dollars' worth you speak of, turned over to you or to the Etna mines?

Ans. All the coke made for shipment, or most of it, is put in front of the ovens and shipped from them. All or nearly all our business in coke is done from the yard in front of the ovens, as we are in a great measure shut off from our main coke-yard by the sheriff's pile of coke of which I have sworn. As there was no attachment on the coke in front of the ovens, it took the condition with all other coke we made. I know nothing about this identical coke that the sheriff
239 denied as having instruction to attach, and released when he said he was informed by these pl't's that they did not instruct him to attach it.

Intg. 8. If any coke was attached in front of the ovens has it not been sold & have not you got the benefit of the proceeds of such sale?

Ans. Not having been at the mines but a few days the past two years, I am not able to answer any more definitely than I have done. As I understand this matter, when the first attachment of coke made in 1877, the pile was estimated to contain from 27,500 to 30,000 bushels and it was not that part in front of the coke ovens, but the pile on the main coke-yard. As it was impossible for us to continue our business without putting coke on the pile on the main yard, it has sometimes, I presume, contained 50,000 bushels, but has never been taken by shipments without there still being less the am't first estimated, 27,500 or 30,000 bushels. All other coke has been from time to time sold; all arrangements were made between the sheriff & Mr. Pillsbury.

Intg. 9. How do you know that the sheriff said that these plaintiffs did not instruct him to attach the coke in front of the ovens?

Ans. My impression is he told me so himself, but I may have

240 received my knowledge from *from* Mr. Pillsbury, who was his keeper under the attachment in another suit.

Intg. 10. During the 27 days you speak of, when the sheriff had control of the store, did not the sheriff allow you all this time to use the west side of the store & and was not Mr. Furness during the 27 days clerking for you in the room on the west side of said store and furnishing goods to your miners; and did not the sheriff offer to your agent, Pillsbury, to select out of the store $1,000 worth of goods & leave the balance in your possession or your agent; & did not Mr. Pillsbury tell the sheriff in substance that if he took any of the goods to take all & decline to co-operate in a division by allowing a thousand dollars to be withdrawn in value of the goods & leaving the remainder in the store for your use? And did you not say on your return to the mines, after the levy of the attachment, that you would not replevy them; that you could buy a new stock easier, and that you intended to make complainants pay for the goods?

Ans. When I learned that the sheriff had attached the goods in the store, put Mr. Mulligan in keeper, taken the key away &
241 closed the business of the store, I knew it was one more of the efforts of these pl't'ffs to carry out their threat, "to ruin me," and knew also my miners and their families, consisting of between three and four hundred, would suffer for food, as they all looked to me for their daily bread, having no other source from which to be fed. I at once made every effort in my power to forward supplies to keep them from starvation. When the meal, flour, meat, coffee, & other necessaries arrived at the mines, I was informed, they were distributed from the platform of the little railroad station to the representatives of the various families. What remained over night was taken to one of the out-buildings of the store from which the heavy goods had been removed for safe-keeping into the main store, and distributed from there the next day. The store proper was not in our control or use for the entire time the goods were kept in it. I know nothing of the transactions or conversations alluded to in this question as having taken place between Mr. Pillsbury and sheriff. I know Mr. Pillsbury took the sheriff's men to the house, fed & lodged them, and treated
242 them with all the consideration the officers of the law are entitled—while they were nearly a week in taking an account of stock. They had no obstructions put in their way, and took or left whatever they were instructed to; no instructions were given by me, except to have all the goods they took away appraised by impartial, competent persons, and to take the sheriff's receipt for them when they removed them. The sheriff was out there after the attachment, and I have never heard that the deputies had any discretion in the matter, and only obeyed the written instructions of the pl'fs' attorney, which are among the papers in this case. Mr. W. F. Furness was the merchant at the mines, and had as full control of the store as Mr. Pillsbury had of the working of the mines. Mr. Furness was in my employment the 27 days mentioned, and assisted in distributing the supplies sent out by me. I was there but once after the attachment before the goods were removed, and that was after the sheriff's men commenced taking account of stock. I did not see the sheriff when the attachment was made, nor for many months afterwards, and had
243 no communication with him except what has been narrated in this deposition. I do not recollect of any one asking me to replevy the goods, but may have said I could buy a new stock of goods easier than to replevy this, with the declaration in this bill sworn to

by V. A. Gaskill, "That he was much involved in business and in heavy litigation in the courts of the country, both State & Federal—that although he claims to have considerable property, real & personal, but much of it was under attachment and the largest portion of this property he only holds equitable or qualified title, and against he gets through with his litigation, complainant believes he will have but little, if anything, left, and will be broken up and entirely insolvent."

With this on record I could much easier buy the goods necessary to keep my dependents from starving than to give the requisite five thousand dollars' replevin bond. As I claim, there is no foundation for this suit, and it was commenced for other purposes than an expectation of recovery or getting judgment against me. I may have said I expected to make them or the sheriff pay for the goods, as I have always
244 been informed that the sheriff or his bondsmen were responsible if unlawful attachments of property were made.

Intg. 11. Has the Vulcan coal mines been bonded, & has said mines been mortgaged to secure said bonds?

Ans. The Bartow Iron Co. have issued bonds and mortgaged their property in the State of Tennessee on surety. The deed of trust or mortgage is recorded in the county of Marian, to which I refer.

Intg. 12. Please state, if you remember, the amount of the mortgage debt on the Vulcan coal mines.

Ans. It being a matter of record, I will refer to that as being the best evidence.

Intg. 13. Not having answered 12 intg., I ask again; please state, if you remember, the amount of the mortgage debt on the Vulcan coal mines.

Ans. I do not know the am't of the bonds that have been issued by the Bartow Iron Co. on its property in Tennessee, or by its trustees.

Intg. 14. Please state, if you remember, the amount of the mortgage debt on the Vulcan coal mines created by the Bartow Iron Company.

Ans. I do not know the amount of the bonds that have been
245 issued, as, by the charter of the Bartow Iron Co., the sec't'y & treas. had the principal management of the company business.

Intg. 15. Were you not the president of said company when said bonds were issued, & does not each bond have your signature on it?

Ans. I am; but I think now they are signed by the sec't'y & treasurer, and not by me, though I may have signed them. I never gave any personal attention to the business of the Bartow Iron Co.

Intg. 16. Please state, if you can, what is the indebtedness of the Bartow Iron Company in Tennessee. Give your best recollection.

Ans. I have no recollection about it, and do not know. I have, as I have before stated, never given any attention to the affairs of the Bartow Iron Co.

Intg. 17. Does, or does not, the charter of the Bartow Iron Company require all bonds of said company, before being issued, to be signed by the president of said company?

Ans. I do not think it does.

Intg. 18. How many bonds did the Bartow Iron Company have a right to issue—state your best information, both as to number and amount—on property in Tennessee?

Ans. Fifty thousand dollars, &, I think, in one-thousand-dol-
246 lar bonds, but may have been part five-hundred-dollar bonds.

Intg. 19. Can you not refresh your recollection, & state, according to your best recollection, the amount of bonds issued under the

above-named right of issuance, & is it not so that all the bonds which said company had a right to issue in Tennessee have been issued, & do you not know that several thousand dollars' worth of said bonds have been placed as collateral security to secure debts of said company; & if so, state how much in amount have been so placed, as you now remember?

Ans. As I have heretofore stated, I have never had anything to do with the management of the affairs of Bartow Iron Co. This company organized in the State of Georgia seven years before I had any knowledge of it. Its place of business was in Benton County, and I have never spent one whole day there at any one time. I signed the mortgage mentioned, & may have signed the bonds, though do not recollect of doing so, but am sure I did not sign the . The bonds & mort-
gage went into the hands of the trustee, and any and all arrange-
247 ments in connection with this transaction has been done on the
part of the company, as far as I know, by the sec't'y and treasurer. I have never heard of the sale of any of the bonds, and do not know where any of them are, unless they are in the hands of the trustees.

Intg. 20. Did you not hypothecate several thousand dollars' worth of said bonds as collaterals, in Nashville, in the 1st National Bank in Nashville, and also place several thousand dollars' worth of said bonds in the hands of the proper authorities of the Western and Atlantic Railroad of Ga. to secure freight accounts due said road by said company? If so, how many thousands in all?

Ans. As indicated in my answer to question No. 18 I have never seen one of the bonds since they went into the hands of the trustees, I have never had one in my hand, I have never hypothecated one, and I do not know where any of them are, unless they are in the hands of the trustees, nor do I know anything more about these bonds than I have told.

Intg. 21. Who is the secretary & treasurer of said company?

Ans. F. J. Stone.

Intg. 22. If you have in your possession or control a copy of
248 the charter of Bartow Iron Company, will you please append
a copy of the same and make it a part of this deposition & make it Exhibit Q?

Ans. I have no copy of the charter of the Bartow Iron Company in my possession or under my control.

Intg. 23. Is or is not the Bartow Iron Company involved in debt in Tennessee for more than its property in Tennessee would sell for if put upon the market; I mean its property in the Vulcan coal mines? Give your best judgment. I mean debts which are a lien anterior to the attachment in this case.

Ans. I know of no such indebtedness that is a lien anterior to this attachment.

Intg. 24. Did not the Bartow Iron Company create its bonded debt on its property in Tennessee anterior to the levy of the attachment in this cause?

Ans. I presume it did, though have not in my mind the exact date of either transaction. I mean the delivery of the bonds and mortgage into the hands of trustee.

Intg. 25. What in your opinion was the Vulcan coal mines named
in this suit worth more than the debts against said mines which
249 were a lien at the time of the attachment in this suit?

EXCEPTION TAKEN BY DEF'T'S SOL'R.—Defendant's solicitor, N. H. Burt, excepts to the foregoing question—

1. Because there are no actual liens prior to the attachment shown, merely assumed.

2. Because it seeks merely the opinion of the witness, without showing him an expert.

COM'NS. RULING.—The com. overrules the exceptions and the witness will answer.

R. M. BARTON, JR.,
Com'n'r.

Ans. I do not know that there was any lien on the property at the time of this attachment. The mortgage & bonds were put into the hands of the trustees, and was the company property and still are unless issued. At the time these bonds were put into the hands of the trustees the property was considered valuable, as there were indications of more coal than subsequent developments proved. Coal was then selling at a comparatively fair price, and with free labor at all the mine would probably now be of comparatively great value. The penetentiary lease of convicts for working in the mines are about to expire, and the general opinion seemed to be that the convicts would
250 thereafter be confined in the prison yard, & no longer compete with free labor at a cost to lessees of some fifteen or twenty cents per day. The coal then was selling at ten & eleven cents per bushel at Shell Mound, 5 miles below Vulcan.

The new lease of the penetentiary convicts to one party has made a monopoly in their hands, and destroyed to a great extent the value of coal lands. Coal is now offered at Shell Mound at three (3) cents a bushel. This with the general depreciation of the value of real estate makes it impossible for me to put a market value on the property or the price it would sell at. Independent of the improvements I do not consider any coal lands in Tennessee as of value for coaling purposes while this pernicious system of leasing convicts for mining coal continues. In estimating its value a person must calculate the chances of the system being changed, but otherwise I should only value this property as wild mountain lands, and the value of the improvements to be removed. The improvements put on the property cost a large amount, and would be valuable if the mines could be worked at a profit, but to take away from the mines they are of such a character that their
251 value would be very much lessened. I cannot tell what the mines would have sold for at the time of this attachment.

Int'g. 26. What do you consider the Vulcan coal mine property named in this suit to be now worth?

Ans. I have answered this question in answer to question 25, as well as I am able. It is a long time since I was on the property, and do not know the condition of the improvements, and could not intelligently give an opinion unless I examine personally the property.

Further this deponent saith not.

J. C. HASELTON.

Sworn to & subscribed to before me, May 17, 1879.

R. M. BARTON, JR.,
U. S. Com.

Defendant excepts to all questions and answers for insolency and impertinency, and more particularly to the questions and answers under the head of "recross-examination" as not pertaining to any matters con-

tained in defendant's re-examination—thetwo questions asked by him—and defendants waive any formal caption and certificate, May 17, 1879.

N. H. BURT,
Sol. for Def't.

Bill of costs of R. M. Barton, jr., U. S. com.

For taking dep., 75 fo. at 20c., $15.00; pro rata expenses, $15.10.

(Endorsed:) Deposition of J. C. Haselton and exhibit. Filed Sept. 10, 1879. A. R. Humes, clerk.

252 *Deposition of Wm. Hall.*

V. A. GASKILL & WIFE
vs.
BARTOW IRON CO. ET ALS.

Cause removed from Jaspar to the Federal court, at Knoxville.

Deposition of WILLIAM HALL in behalf of def'ts.

Quest. 1. State your place of residence, and whether or not you are a surveyor, or were in June, 1874.

Ans. I reside in Marian County; am a surveyor of said county, and was in June, 1874.

Quest. 2. Loop upon the map herewith filed as Exhibit A to this deposition, and state if you surveyed any represented on said map, when, and whose request.

Ans. In June, 1874, at the request of J. C. Haselton, I made a survey to ascertain the boundary of the SE. qr. of the 3rd section in 2d fractional township, range 6th, west of the basis line, as represented on said map in blue color.

Quest. 3. In what manner did you find and ascertain the boundaries?

Ans. By tracing the old marked line around a portion of said qr., and by closing the lines around this qr. from corners found on old lines, I ascertained the location of the old lines by beginning at a corner near Whiteside depot, about two miles from said qr. and running to said qr.

253 Quest. 4. If you can, you will please so draw upon said map as to show the location of the Vulcan mines.

Ans. I have marked the map.

Quest. 5. Look upon the deeds here filed as Exhibits B, C, & D, to this deposition, and say whether the SE. ¼ of said section 3 are embraced in said deed.

Ans. I have examined the exhibits, and they describe said SE. qr. of section 3, upon which are the Vulcan mines.

Quest. 6. Are the Vulcan mines limited to said SE. ¼ of sec. 3?

Ans. They are not; they run into the NE. qr. of section 10 and the the NW. qr. of section 11.

Quest. 7. Is the R. R. correctly marked on the map Exhibit A? If not, mark a correct line.

Ans. It is not correctly marked. I have marked a correct line running north of the old line on the map.

X by sol. for Gaskill & wife:

Quest. 1. How did you find the beginning corner near Whiteside depot?

Ans. By running various lines in that section and locating said corner from them.

Quest. 2. What instruments did you use in running said lines?

Ans. A surveyor's compass.

Quest. 3. Who was with you when you run the lines?

254 Ans. Mr. Isbell, Mr. Albren, and another gentleman. I cannot remember his name. These were with me all the time. There were several other parties called in at different times, whose names I cannot remember at this time. Mr. Haselton & Mr. Frank Eaton were along a portion of the time assisting in locating a beginning point or corner.

Quest. 4. Did you have any other guide to find lines or corners except marks on trees; if so, what?

Ans. None except the information derived from persons who proposed to know the location of the original corners.

Quest. 5. Who gave the most information about the original corner?

Ans. A Mr. Jesse Parker, an old gentleman who has been living in the neighborhood for a number of years.

Quest. 6. Did you find the land-marks scarce or plenty, in your tracing for lines & corners?

Ans. In some places marks were plenty, and in others scarce, depending on the amount of timber; in places, the timber was all destroyed, or nearly so, and in others, standing pretty thick.

Quest. 7. Where the timber was gone, did you not have great trouble in keeping the lines?

255 Ans. In some places the grounds were very rough, and were some trouble to follow; when the lands were level the marks were very easily followed.

Quest. 8. How long have you been acting as a surveyor of land?

Ans. About ten years.

Quest. 9. How long has the compass you used been in use, & what variations does it make, and how do you know it to be correct?

Ans. My compass has been in use about 6 years; the variations on the original lines in the Ocoee district is about 2¾ degrees, I think; to the best of my recollection I allowed for the variations in making the survey.

Quest. 10. Was your compass new or old six years ago; and has it been changed in any way since you got it?

Ans. It was new, and has not been changed.

Quest. 11. How did you get your knowledge of surveying?

Ans. By studying practical surveying.

Quest. 12. Did you study under a teacher, or are you what is called a self-educated engineer?

Ans. I studied surveying under a competent engineer, W. J. Kelley.

Quest. 13. By what process did you discover that the R. R. is not correctly marked on the map marked Exhibit A?

Ans. By running the lines; seeing the location of said road.

256 Quest. 14. How far does the R. R. enter the NE. qr. of sec. 3 above the SE. corner of said section?

Ans. I do not know exactly the distance. I located the road on the map as best I could from observations as I run the lines about, I would say, 100 or 150 yards.

Quest. 15. Has your compass been changed any since you bought it?

Ans. It has not; only sharpening the needle-pin.

Quest. 16. How far above the SW. corner of the NE. qr. of sec. 3 does the R. R. leave said NE. qr. of sec. 3, going west?

Ans. About 500 y'ds, to the best of my recollection.

Quest. 17. How long did you study under Mr. Kelly?

Ans. I do not remember how long; about ten months, I think.

Re-ex:

Quest. 1. Was Haselton with you when you surveyed the SE. ¼ of sec. 3?

Ans. He was not.

Quest. 2. Where is the spring that supplies the R. R. tanks?

Ans. On the NE. qr. of section 3, near the south line of said qr., about 5 o' 6 yds., I think; not exceeding six yards.

Quest. 3. What is the nature of character of the landmarks between the SW. ¼ and NW. ¼ of sec. 2?

257 Ans. They are plenty on the east end of the line, but scarce on the west.

Quest. 4. What of the line or marks between the NE. ¼ & the SE. ¼ of sec. 3?

Ans. There is none, the original timber being principally all gone.

Further deponent saith not.

WM. HALL.

Sworn to and subscribed before me this Ap'l 5, 1875.

J. R. HARRIS, *J. P.*

GASKILL & WIFE
vs.
BARTOW IRON CO. ET ALS.

In Federal court at Knoxville, cause removed from Jaspar.

In this case it is agreed that the foregoing deposition of William Hall, with its exhibits, A, B, C, & D, heretofore taken in a chancery cause of Gaskill & wife v. Badge & Eaton, & Hazelton et als., in Chattanooga, of which the foregoing and exhibits are copies (except the style of the suit), may be read in evidence, and have the same force and effect as if regularly taken in this cause, subject only to exceptions as to competency, materiality, and relevancy, as evidence; said exhibits are copies from the originals, and will be regarded as duly certified copies.

It is agreed that no exceptions, other than as to competency, ma-
258 teriality, and relevancy, shall be taken to the proof already taken in this cause, nor exceptions as to the times of taking and filing proof by either side before the adjournment of the next September term of this court, and also copy of advertisement of supreme court sale marked X.

This Aug. 20, 1879.

W. H. DE WITT,
Solicitor for Compl'ts.
NASH. H. BURT,
Solicitor for Def'ts.

(Endorsed:) V. A. Gaskill & wife vs. Bartow Iron Co. et als. Deposition of Wm. Hall. Filed with exhibits, Sept. 10, 1879. A. R. Humes, clerk.

(Here follows map marked Exhibit A, page 258.)

Exhibit B to Hall's dep.

I, Erasmus Alley, of Marian County, Tennessee, do hereby bargain, sell, & convey to J. Holmes Agnew and James C. Haselton, of Yonkers, State of New York, for the consideration of seven thousand five hundred dollars, thirty-five hundred dollars to me in hand paid, the receipt of which I hereby acknowledge; the residue is secured to me by two several notes, each for two thousand dollars, payable in the city of New York, one at six months and the other at twelve months, both drawing interest from date, the tracts and part of tracts of land hereinafter described, lying in the county of Marian, State of Tennessee, to wit: The northeast & northwest quarters of
259 section twenty-seven, the southeast quarter of section twenty-one, the northeast quarter of section twenty-eight, & the southeast quarter of section twenty-two, all in the first fractional township and sixth range west of the basis line in the Ocoee district; also the northwest quarter of section two, both in the second fractional township, sixth range west of the basis line in the Ocoee district, containing one thousand acres; also the undivided half of the northwest quarter of section one (subject to a lease for five years to Walker & Spencer, the benefit of which lease, to the extent of my interest from this date, is hereby conveyed); the undivided half of the following parcels; forty acres; being the northwest corner or fourth of the southeast quarter of section ten, the southeast quarter of section three, the southeast quarter section two, the northwest fourth of the northeast quarter of section two; the northwest quarter & the remainder previously we granted, being 120 acres of the northeast quarter of section ten, the northwest corner of the southeast quarter of section ten, and the remainder previously we granted, being one hundred and twenty acres of the
260 southwest quarter of section nine, the east half of the southeast quarter of section ten, the northeast fractional quarter of section fifteen, being thirty-eight acres, all in the second fractional township & sixth range west of the basis line in the Ocoee district, containing in said tracts one thousand one hundred & eighteen acres, the undivided half of which is intended to be hereby conveyed, being five hundred and fifty-nine acres: To have and to hold the land and premises hereby conveyed, with all mines & minerals, unto the said J. Holmes Agnew & James C. Haselton, their heirs and assigns forever; the title to which I do for myself, my heirs, assigns, & legal representatives warrant unto the said J. Holmes Agnew and James C. Haselton, their heirs and assigns, against the lawful claims of all persons whatever. The right of way and of water, for the use of the Nashville & Chattanooga Railroad, are, however, reserved for said road. Witness my hand & seal Jan'y 7, 1859.

Test. E. ALLEY. [SEAL.]

Witnesses:

G. F. SWIFT,
REESE B. BRASLESOM.

STATE OF TENNESSEE,
Marian County:

Personally appeared before me, W. Byrne, clerk of the county
261 court for said county, E. Alley, with whom I am personally acquainted, who acknowledged that he executed the within deed

of conveyance on the day it bears date, for the purposes therein contained and expressed.

Witness my hand, at office in Jasper, this 10th day of March, 1859.

W. BYRNE, *Clk.*

STATE OF TENNESSEE,
Marian County:

I, J. D. Thach, register of Marian County, certify that the foregoing deed of conveyance, together with the clerk's certificate, was received and noted for registration 10th day of March, 1859, and registered in book H, pages 309 and 310. Witness my hand, at office in Jaspar, this 2d day of Apr., 1859.

J. D. THACH, *Reg't,*
By W. BYRNE, *D. R.*

(Endorsed:) E. Alley to Agnew & Haselton. Deed. Exhibit B to Hall's depo.

Exhibit C to Hall's depo.

For a valuable consideration we, Charlotte T. Griffin, formerly Charlotte T. Agnew, and Charles R. Griffin, husband of Charlotte, and Mary T. Agnew and Clara H. Agnew, the only children and heirs at law of J. Holmes Agnew, deceased, except Samuel J. Agnew, do hereby
262 transfer and convey, quitclaim, and relinquish to James C. Haselton all the right, title, and interest that we have by inheritance in and to the southeast quarter of section three in the second fractional township, sixth range west of the basis line of the Ocoee district, in Marian County, Tennessee: To have and to hold the same to the said James C. Haselton, his heirs and assigns forever. February 22, 1873.

CHARLOTTE T. GRIFFIN. [SEAL.]
CHARLES R. GRIFFIN. [SEAL.]
MARY T. AGNEW.
CLARA H. AGNEW.

In presence of—
W. FREEMAN,
R. A. TRUHAM, as to C. T. Griffin, &
C. R. GRIFFIN, as to Clara H. Agnew.
J. M. DAISON,
C. E. MASON.

STATE OF NEW JERSEY,
County of Essex, ss:

Personally appeared before me, the undersigned, a notary public for said State, Charlotte T. Griffin and Charles R. Griffin, two of the within or above-named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within or above
263 instrument for the purposes therein contained, and Charlotte T. Griffin, wife of said Charles R. Griffin, having appeared before me, privately and apart from her husband, the said Charles R. Griffin, acknowledged the execution of the said deed to have been done by her freely, voluntarily, and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed, this 22 day of February, A. D. 1873.

[SEAL.] WILBERFORCE FREEMAN,
Notary Public, New Jersey.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared Mary T. Agnew, to me known to be the individual named in and who executed the foregoing conveyance, and acknowledged the same for the purposes therein contained.

Witness my hand and notarial seal, this twenty-eight day of February, A. D. 1873.

[SEAL.] H. TUNISON,
Notary Public.

264 STATE OF MICHIGAN,
County of Wayne, ss:

On the sixth day of March, 1873, before me, the subscriber, a notary public for the county of Wayne, State of Michigan, personally appeared Clara H. Agnew, to me known to be the individual named in and who executed the foregoing conveyance, and acknowledged the same for the purposes therein contained. Witness my hand and official seal this sixth day of March, A. D. 1873.

[SEAL.] J. M. DAVIDSON,
Notary Public.

STATE OF TENNESSEE,
Marian County:

REGISTER'S OFFICE,
Jaspar, Tenn., March 29, 1876.

I, Wm. Byrne, register for said county, do certify that the foregoing deed and certificate were filed March 24, 1876, at 5 o'clock p. m., entered on page 3, of note-book A, and registered to-day in book L, page 152, of my office.

WM. BYRNE,
County Register.

(Endorsed:) The heirs of J. Holmes Agnew to J. C. Haselton. Deed Exhibit C to Hall's depo.

265 *Exhibit D to Hall's depo.*

Whereas Erasmus Alley obtained a decree for the sum of $5,985.91 and costs against J. Holmes Agnew and James C. Haselton in the supreme court of the State of Tennessee, at Knoxville, on the 27th day of November, 1866, upon which a writ of fieri facias issued on the 24th day of December, 1874, with a credit of $5,350.00 paid upon said decree on the 10th day of May, 1867, directed to the sheriff of Marian County, Tennessee, and which came to my hands as sheriff of said county of Marian on the 1st day of January, 1875, and there not being personal property of the said J. Holmes Agnew and James C. Haselton sufficient to satisfy the said execution, I levied the same on the 6th day of January, 1875, on the following tracts of land, the property of said J. Holmes Agnew and James C. Haselton, lying and being in the county of Marian, State of Tennessee, to wit: the northeast and northwest quarters of section twenty-seven; the southwest quarter of section twenty-one in the first fractional township; one-fourth of the northeast quarter of section two in the second fractional town-

ship; and also the undivided interest purchased of E. Alley by J. Holmes Agnew and James C. Haselton in forty acres of the
266 northwest fourth of the southeast quarter of section ten; the southeast quarter of section three; the northeast quarter of section one in the second fractional township, and all in the sixth range west of the basis line of the Ocoee district; and after having advertised and given notice according to law, I did offer the said several tracts of land separately at public sale, at the court-house door of Marian County, at Jaspar, on the 2d day of February, 1875, agreeably to said advertisement and notice, and James C. Haselton, being the highest and best bidder of the northeast quarter of section twenty-seven in the first fractional township, the same was struck off to him at the price of twenty dollars; and the said James C. Haselton, being the highest and best bidder of the northwest quarter of section twenty-seven in said first fractional township, the same was struck off to him at the price of twenty dollars; and the said James C. Haselton being the highest and best bidder of the southeast quarter of section twenty-one in the first fractional township, the same was struck off to him at the price of twenty dollars; and the
267 said James C. Haselton being the highest and best bidder of the one-fourth of the northeast quarter of section two in the second fractional township, the same was struck off to him at the price of twenty dollars; and the said James C. Haselton being the highest and best bidder of the undivided interest in forty acres of the northwest fourth of the southeast quarter of section ten, the same was struck off to him at the price of twenty dollars; and the said James C. Haselton being the highest and best bidder of the undivided interest of the southeast quarter of section three, the same was struck off to him at the price of one thousand and eighty-eight & $\frac{27}{100}$ dollars; and the said James C. Haselton being the highest and best bidder of the undivided interest in the northeast quarter of section one, the same was struck off to him at the price of twenty dollars; and the said several tracts in which said undivided interest is sold as aforesaid are in the second fractional township, and all of the above-described lands are in the sixth-range, west of basis line of the Ocoee district, in Marion County, Tennessee, and the said undivided interests in said several tracts
268 was purchased of E. Alley by J. Holmes Agnew and James C. Haselton, as well as all the above-described lands, in fact. And said several sums for said several tracts of land as aforesaid being to me in hand paid, the highest bids as aforesaid, and which are a full satisfaction of the balance of said supreme court, and in full of said execution issued thereon, therefore, in consideration and in consequence of the premises, I do hereby transfer and convey to James C. Haselton and his heirs forever all the right and title of J. Holmes Agnew and James C. Haselton to the said several tracts of land above described, for the consideration of the said several sums as aforesaid, bid upon said several tracts by the said James C. Haselton, as aforesaid, to me paid as aforesaid: To have and to hold the same unto the said James C. Haselton, his heirs and assigns forever, in as full and ample a manner as I as sheriff aforesaid can or ought to convey the same, but no further or otherwise. This the 2d day of February, 1875.

R. S. PRYOR,
Sheriff of Marian County.

STATE OF TENNESSEE,
Marian County:

269 Personally appeared before me, J. L. Minter, cl'k of Marian County court, R. S. Pryor, sheriff of Marion County, with whom I am personally acquainted, and acknowledged that he executed the within deed for the purposes therein contained. Witness my hand at office this 2d day of Feb'y, 1875.

J. L. MINTER, *Cl'k.*

STATE OF TENNESSEE,
Marian County:

I, W. Byrne, register of said county, certify that the foregoing deed, together with the clerk's certificate, was received and noted for registration the 2nd day of February, 1875, at 9 o'clock a. m., and registered in book L, pages 10, 11. Witness my hand, at office in Jaspar, this 3rd day of Feb., 1875.

W. BYRNE, *Reg'r.*

(Endorsed:) R. S. Pryor, sheriff. To J. C. Haselton. Deed. Exhibit D to Hall's depo.

Supreme court, Knoxville, Tenn.

ERASMUS ALLY
vs.
J. HOLMES AGNEW, ET ALS.

In this cause the following is the advertisement of the land sold, as appears in the Weekly American Union, a newspaper published at Chattanooga, in Apr., 1867, which is attached to the record:

270 *Supreme court sale.*

Erasmus Ally vs. J. Holmes Agnew, James C. Haselton, and Samuel J. Agnew.

By virtue of a decree of the hon. supreme court of Tennessee, at Knoxville, on the 27th of November, 1866, in this cause, I will on Friday, the 10th day of May next, sell to the highest bidder, at Whitesides depot, on the Nashville & Chatta. R. R., in the county of Marian, Tennessee, all the right, title, claims, and interest that the defendants have in and to the following-described lands, to wit:

The northeast and northwest quarters of section 21; the northeast quarter of section 28; and the southwest quarter of section 22; all in the first fractional township. Also, the northwest quarter of section 2, and one-fourth of the northeast quarter of section 2, in the second fractional township. Also, the undivided half of the northeast quarter of section 1, in the said second fractional township, and the undivided half of 40 acres, being the northeast corner or fourth of the southeast quarter of section 10; the southeast quarter of section 11; the south-
271 east quarter of section 2; the northwest fourth of the northeast quarter of section 2; the northwest quarter, and the remainder previously we granted, being 120 acres of the northeast quarter of section 10; the northwest corner of the southeast quarter of section 10, and the remainder previously we granted, being 120 acres of the southwest quarter of section 9; the east half of the southeast quarter of sec-

tion 10, and the northeast fractional quarter of section , being 38 acres, in said second fractional township, and all the foregoing lands being in the sixth range west of the basis line in the Ocoee district, Marion County, Tenn., sold to satisfy the complainants' lien and interest, subject to the right of way and privileges of water to and for the use of the Nashville and Chatta. R. R. Co. Sold in bar of the equity of redemption. They will be sold in a body or in parcels, to best suit the interest of parties. One hundred & fifty dollars will be required to be paid down, and the remainder on a credit of one and two years,
272 purchaser entering into bond with interest from date, with good and sufficient security in equal installments, and a lien will be retained on said land until purchase-money is fully paid.

Mar. 6.

M. L. PATTERSON, *Clerk.*

STATE OF TENNESSEE:

I, J. F. Deadrick, clerk of the supreme court of said State at Knoxville, do hereby certify that the foregoing is a full and true copy of the advertisement of sale in the cause therein named, as the same appears of record in my office.

Given under my hand and the seal of said court, at office in Knoxville, this 16th day of October, 1874.

[L. S.] J. F. DEADRICK, *Clerk.*

(Endorsed:) Copy of advertisement, "X."

Deposition of H. L. Whitiside.

In Federal court at Knoxville, cause removed from Jaspar chancery court.

V. A. GASKILL & WIFE
vs.
THE BARTOW IRON CO. ET ALS. } No. 651.

Deposition of H. L. Whiteside, taken by consent in behalf of complainants.

Quest. 1st. State your age.

Ans. Fifty-four years.

273 Quest. 2. Are you complainant in this case?

Ans. I am.

Quest. 3. Were you one of the complainants in the suit of V. A. Gaskill & others against Badge & Eaton & J. C. Haselton, tried in the chancery court of Hamilton County?

Ans. Yes.

Quest. 4. Did you give your deposition in that suit?

Ans. I did.

Quest. 5. In what year did you give that deposition?

Ans. In 1876, I think.

Quest. 6. Have you a portion of the original deposition now before you, and will you therefrom refresh your recollection as to its subject-matter?

Ans. I have a portion of it before me, & will refresh my memory as far as it goes.

Quest. 7. Please state if you have compared the paper herewith filed

marked No. 2, with a certain portion of your said deposition, embracing certain questions propounded by counsel on both sides, and answers made to each thereto respectively by you; and state whether or not the several answers given to said questions by you are correct, and do you now recollect them as true, and if so, adopt above paper
274 (No. 2) as a part of your present deposition; if you can, is the copy correct?

(Copy.)

Qu. At the time you took the quitclaim deed from E. Alley, referred to in the testimony of E. Alley, & in the proceedings in this cause, did you know that the lands therein described & conveyed to you had been actually conveyed to Haselton & Agnew, or did you suppose the title to them to be in Alley? State how this was & your reason for taking said deed.

Ans. I did not know that the SE. ¼ of sec. 3 had been conveyed to Haselton & Agnew, and I was afraid that Mr. Alley, when he found that I had by mistake been left out of my supreme court papers, would refuse to recognize my title to the land. Therefore, without letting him know of the mistake, I got Alley's quitclaim deed. I had no actual knowledge of what had been conveyed Haselton & Agnew.

Recross. Did you know that the SE. ¼ of sec. 3 was not mentioned in the decree of sale under which you purchased?

Ans. I did not.

Ques. Then why did you get Alley's conveyance?

275 Ans. I had agreed to sell the land, that is, the Vulcan mines, & Mr. Whitsey was employed by the party to survey the lot of land on which the mines are located, and he discovered the mistake & reported it to me.

Ques. How much did you pay Alley for his quitclaim deed?

Ans. I gave him a half interest in some land on which was a valuable sulphur spring, as he represented.

Ques. Did not Alley claim that he had this sulphur spring reservation any way, and only wanted to protect it?

Ans. No, sir.

Ques. Did you give him any deed or writing of any kind for said half interest in the land; why was it not expressed in the deed?

Ans. The quitclaim deed had been written for me by Mr. Key, before I left Chattanooga. To the best of my recollection there was a paper prepared by him, Mr. Alley, & signed by me; the reason it was not embraced in the deed was I did not want to have the deed altered by any one or additions made to it by any one but my own lawyer.

276 Ques. Did you tell Alley that the SE. ¼ of sec. 3 had been left out of the proceedings and decrees of sale; or was it your purpose to get a quitclaim without letting him know the fact?

Ans. I told Alley I wanted the quitclaim to satisfy the parties to whom I was trying to sell the land; I was afraid if I told him it was left out of my supreme court title he might take advantage of it, and not let me have the land.

Ques. Was the quitclaim deed drawn for the purpose of covering up the SE. ¼ of sec. 3?

Ans. It was not done for the purpose of defrauding any one of their rights, but for the purposes above referred to.

Ques. Was not the quitclaim deed made to give you title to SE. ¼ of

sec. 3; did not the fact that the SE. ¼ of sec. 3 was left out in the decrees induce the quitclaim deed?

Ans. The reasons for getting the quitclaim deed are stated in the face of the deed, to which I refer as an answer to this question.

Ques. What was the value of the half interest of the land you
277 say you conveyed to Alley; and was it for the SE. ¼ of sec. 3, or for other considerations or parcels of land?

Ans. I did not know the value of the land; he represented to me that the spring had great medicinal virtue, and was then resorted to by people in the surrounding country, and by his own family, almost every summer. From the way Mr. Alley talked about it, I thought he believed a fortune might be made out of it as a place of public resort; it is but a short distance from the Nashville & Chattanooga Railroad.

Ques. Do you know what section of land it was, & whether you really had title to the section; was it a part of your purchase in the Alley sale?

Ans. I know nothing about it but what Alley told me; he told me it was a part of the Alley purchase.

Ques. Was not this spring or section some 2 miles at least from the R. R., and to get to it would have to cross a deep ravine or valley, and go upon a high mountain?

Ans. I don't know.

H. L. GASKILL.

Sworn to & subscribed before me this 7th of Oct., 1876.

J. C. CALDWELL,
By J. T. HILL, *D. C. & M.*

278 I have compared said paper marked (No. 2) with a portion of my said deposition; it is a correct copy of certain questions & answers made & given in my said deposition, & the several answers given to the several questions are true, as I now remember, in substance, & I hereby adopt the several answers given in paper marked (No. 2), and herewith file the same as a part of this deposition.

Quest. 8. Were you present in person when the supreme court sale was made under which you purchased; and did you make your own bids; and did you then know anything of the particular No. of section on which the Vulcan mines were situated at that time; and did you understand yourself as purchasing, and the clerk of the supreme court as selling the Vulcan mine coal lands at the time, & give date of sale. What claim did you own upon which you were bidding? Explain it.

Ans. I was present in person when the supreme court sale was made, under which I purchased, and I did make my own bids. I did
279 not, at the time, know anything of the particular No. of the section on which the Vulcan mines were situated. I understood myself as buying the Vulcan mines, & the clerk of the supreme court as selling the Vulcan mines; at the time of the sale it was so stated & talked of on the ground. Mr. Alley had borrowed a large amount of money from my husband, J. A. Whiteside, & gave him a claim on the Alley mine, or the proceeds of the sale of the mine, as security for the money. That claim I bought from the estate of J. A. Whiteside after my husband's death, and the claim was always designated the Alley mine claim, which is the same as the Vulcan mines. My present recollection is after Haselton & Agnew first failed to pay E. Alley on their purchase, said Alley being in need of money, came to my husband, who advanced Alley the large amount of money aforesaid on the faith that

said mines and Alley lands on the proceeds of the sale there should repay or reimburse him. I think the sale was in May, 1867.

Quest. 9. At the time you purchased under said supreme court
280 sale did you know the Eaton boys & Mr. Badge, who leased from you afterward? Who was your agent then & for some time afterward in looking after the property, tenants, & rents? Where were you when the lease contract of June, 1870, was made? Who came to you and solicited the lease? Tell all about that transaction as well as you can recollect.

Ans. At the time of the sale I did not know either of the Eatons personally; I had not even heard their names at that time. John Badge I had seen years before, but had never had any conversation with either of them about the mines. J. P. McMillin was my agent up to 9th of March, 1869; after that time reports from Badge & Eaton were received by Summerfield Key, as my agent, up to Dec., 1869; from that date to date of lease Badge & Eaton reported to me. Some time before June, 1870, E. G. Eaton came to my house & told me he understood some men from Huntsville, Ala., were trying to buy my interest in the Vulcan mines. I told him I thought they would buy my interest. He said it would be injuring him very much to be
281 turned out, & he knew they wanted to mine the lands themselves. He said he had gone to very great expense & they were just starting to make a little money, & if I would lease to him my interest in land on which the Vulcan mines is located, he would make money for both of us & I could sell the balance. I told him I would consider the matter & let him know. He came again to my house in a short time. I told him then I would lease if we could agree on the terms. He then handed me a paper on which he had noted down some propositions. I told him he must do better or I would not bind up the land. I then offered him my interest in the SE. quarter of the section on which the Vulcan mines are located at $100.00 per month certainly & 25 cents per ton on all coal mined over six hundred tons per month. He took my proposition to submit to his partner, and came again with another agreeing substantially to my proposition but requiring more land. I told him I knew nothing about the adjoining lands, or whether it belonged to me. He said he knew it did belong to the Alley inter-
282 est purchased by me. Said he knew it from conversations with Mr. Haselton, & I think Mr. Stone & others, in the neighborhood. On this representation I allowed him in the lease to get any necessary timber off of any adjoining lands owned by me. I had no conversations with any other *other* man of the firm but E. G. Eaton on the subject of leasing. These transactions occurred at my house in Chattanooga, but the lease was finally written by my lawyer, Mr. Key, in his office, E. G. Eaton & myself being present.

Quest. 10. About what time were you put in possession of your interest in the Vulcan mines under your supreme court procedure?

Ans. In December, 1867, J. P. McMillin, as my agent, was put in possession of the Vulcan mines under my supreme court purchase.

Quest. 11. Did you hold possession & claim the title of your said interest under any other title than your supreme court purchase? If so, state what title, and its date, &c.

Ans. I held possession & claimed title of my said interest only
283 under my supreme court title down to the date of the deed made by Erasmus Alley to me 26 April, 1870; from & after that date I held possession & claimed title to my said interest in the Vulcan mines under both of the above-named titles. Copy of my Alley deed

is marked F, and attached to agreement as to evidence in this cause which is now before me.

Quest. 12. How long did you hold possession by yourself, agents, lessees, of your interest in the Vulcan mines, continuously?

Ans. From the latter part of Dec., 1867, to about June 1st, 1875, the time of the expiration of the Badge & Eaton lease, made by me to them. I held continuous possession of my interest in said Vulcan mines under my titles hereinbefore mentioned.

Quest. 13. For the period of time stated in your last above answer, was your possession and claim of title to your said interest in the Vulcan mines continuous and unbroken or otherwise? And was it open and notorious, and adverse to the claims of all others; or, if not so, how was it? Explain it.

Ans. For the period of time mentioned in my last answer above
284 given, my possession & claim of title to my said interest in said Vulcan mines was continuous & unbroken, open & notorious, & adverse to the claims of all other persons. Badge & Eaton held possession under me till the expiration of their written lease June 1st, 1875, but they nor any one for them paid any rents to me for a long time before the lease expired.

Quest. 14. State whether or not Badge & Eaton ceased to pay you any rents at all or very little after Oct., 1873, and whether or not you brought several suits before justices' courts against them in 1874, & recovered judgments for a large sum which was neither paid nor collected, and whether you finally to collect the judgment, and a large sum of other rents they owed you, filed your bill in the chancery court of Hamilton County in Dec'r, 1874, against your said lessees & J. C. Haselton et als.

Ans. Badge & Eaton did cease to pay me any rents long before the lease expired. I cannot state the exact date without reference to certain papers not now before me, but they paid but little or no
285 rents after Oct., 1873, and perhaps had not paid in full to that date. I did bring several suits, recover several judgments & for considerable sums before a justice's court against them for unpaid rents, and in Dec., 1874, I brought suit against them & Haselton et als. in chancery to collect said judgments & other rents due me under the lease, & got a decree for several thousand dollars.

Quest. 15. Did you lease to Badge & Eaton in the made to them June 1st, 1870, any part of the section 11 mentioned by Haselton in his deposition? Did they mine any or any part of said section with your knowledge and consent? Did they to your knowledge, ever pay you anything for mining on said section 11 or any of the coals dug & removed therefrom by them, if they got any out of it? Give the facts?

Ans. No part of the section 11, mentioned by Haselton in his deposition was included in the lease I made to Badge & Eaton June 1st, 1870. They never mined any on said section 11 with my knowledge and consent. They never paid to me any rent on account of their having mined on said section 11. Nor did they ever pay me any
286 coals dug out of said section 11. My present recollection is that E. G. Eaton stated to me at one time that they had commenced mining on section 11, and I stated to him and he so understood it at the time, that I had no interest in rents from section 11, under my lease. They never paid me any rents even under my lease after they commenced mining on section 11 is my best recollection at present. Of one thing I do feel quite sure, that they had not paid me all they owed me for rents of the property embraced in my lease to them when they

commenced on section 11. Nor did they ever pay me in full thereafter for rents due me under my lease, which accrued before & after they commenced mining on sections 11.

Quest. 16. Did you intend by your deed of lease of June 1st, 1870, made to Badge & Eaton, to embrace any lands for mining purposes, except what was called the Vulcan mines where the same were then situated, & the other lands embraced in your said lease were rented for use of timber, &c., as mentioned in the lease? Explain the facts.

287 Ans. For mining purposes, what was then called the Vulcan mines & the land on which the same was situated, alone were intended to be embraced by the parties to the lease, or rather my half interest in said mines, under my titles hereinbefore mentioned, alone were intended to be embraced. I think the deed itself, all taken together, shows this fact; the other lands embraced in the lease for use of timber only, meant & stated other such lands as I actually had an interest in.

Cross-examination:

Quest. 1. Do you not know as a fact that you have received rents or recovered judgment for rents to the extent of some $2,000.00 for coal mined in sec. 11, in your suits for Badge & Eaton?

Ans. I have not.

Quest. 2. Do you know whether in your decree against Badge & Eaton the rents for mining coal on sec. 11 is embraced?

Ans. I do not know what the decree may show, but I know I never received any rents from Badge & Eaton after the' commenced to mine on sec. 11.

288 Quest. 3. Was J. S. Wiltse, now deceased, your agent in negotiating a sale of the Vulcan mines in June, 1870: at the time some parties of Huntsville were talking of buying?

Ans. No, sir; he never was my agent.

Quest. 4. In whose handwriting is your quit-claim deed from E. Alley, dated 26th April, 1870. Is it not in Wiltse's handwriting?

Ans. I do not know in whose handwriting it is, but the quit-claim deed was given me by my lawyer, D. M. Key.

Quest. 5. Do you remember the clerk of *of* the supreme court crying the sale making mention of the mines as "Vulcan mines"?

Ans. I remember his speaking of selling the Vulcan mines before the sale commenced, & also Mr. Key & Alley mentioning the Vulcan mines as the principal piece of property, or the property of most interest to be sold. When he commenced he stated he was going to sell all the lands sold to Haselton & Agnew by E. Alley. This is my present recollection.

Quest. 6. Do you know in what year the mines were named, and called, and known as the "Vulcan mines"?

Ans. I do not know.

289 Quest. 7. Was it not some time a year or two after 1867?

Ans. I do not know the time of the mines being named Vulcan mines, but it must have been several years before 1867.

Quest. 8. Have you not reference to the Alley mines; some one mile and a half east of the Vulcan mines?

Ans. I have reference to the mines now in controversy in this suit.

Quest. 9. Did you stand on the depot platform when the supreme court clerk sold, or were you not a' Spencer's house, some distance below the railroad?

Ans. I do not recollect the spot or particular place on which we all stood.

Quest. 10. Do you know where the Alley mines are; how far from Vulcan mines?

Ans. I do not know of any Alley mines, but the one called the Vulcan or Alley mine.

Quest. 12. Who owns the N. E. ¼ of sec. 3 between the S. E. ¼ of sec. and the R. R.?

Ans. I don't now recollect who owns the different sections or quarter-sections by number in the neighborhood. Unless I had the title papers before me I could not answer the question fully.

Re-examined by compl't:

290 Quest. 1. Was Erasmus Alley or not present at the time you purchased under the supreme court sale aforesaid?

Ans. He was present.

Quest. 2. Have you recently been divorced from Col. V. A. Gaskill, and now a single woman?

Ans. I have and am now a single woman.

H. L. WHITESIDE.

Sworn to & subscribed before me Aug. 27, 1879.

R. M. BARTON, JR., *U. S. Com.*

It is agreed that no exception shall be taken to this deposition, because taken without leave of court, not filed in time, or for any cause whatever, except as to competency, relevancy, or materiality of the matter of the same as evidence.

This Aug. 27, 1879.

N. H. BURT,
Of Counsel for Defendants.

Bill of cost of R. M. Barton, jr., U. S. com., 20 fo's, at 20 cts., $4.00.
R. M. Barton, jr., U. S. com.

(Endorsed:) Deposition of H. L. Whiteside. Filed Sept. 10, 1879. A. R. Humes, clerk.

Deposition of A. C. Eaton.

V. A. GASKILL & WIFE
vs.
BARTOW IRON COMPANY AND OTHERS.

Cause removed from chancery court at Jasper, Tennessee, to the Federal court at Knoxville.

The deposition of A. C. Eaton, taken in rebuttal to the testimony of Mrs. Whiteside.

291 Quest. 1. (By defendants.) You will state when and by whom the Vulcan mines were named the "Vulcan Mines," and known by that name.

Answer. I joined E. G. Eaton & Jno. Badge, in partnership, in Aug., 1867. Sometime after that date the mines were named Vulcan, at my suggestion. These were not known as the Vulcan mines until after the commencement of shipping coal, Dec., 1867.

Quest. 2. (By same.) Had the mines any notoriety in May, 1867?

Answer. None; not known by any name. Badge & Eaton made the first openings upon SE. quarter, sec. 3 sometime in the latter part of the spring of 1867, do not know the exact date.

Quest. 3. (By same.) Have you examined and noticed whether said mines had ever been tested for coal, before any test made or openings by Badge & Eaton?

Ans. I am perfectly acquainted with the land SE. Q. sec. 3, & have been over it several times, have never seen any opening except those made by Badge & Eaton; would have been likely to know if any had been made.

292 Quest. 4. (By same.) How far are the Alley mines from the Vulcan mines, and on what quarter section?

Answer. The Alley mines are on sec. 10, in the rear of Vulcan mines, in what is called Alley Gulf. I think there are some openings on each side of the gulf, which might be in some other sec. but do not know; but none of the openings are on sec. 3.

Further deponent saith not.

A. C. EATON.

Sworn to & subscribed before me Sept. 3, 1879.

R. M. BARTON, JR.
U. S. Com.

(Endorsed:) Deposition of A. C. Eaton. Filed Sept. 10, 1879. A. R. Humes, clerk.

Statement of facts as to ejectment suit.

V. A. GASKILL & WIFE
vs.
BARTOW IRON COMPANY AND OTHERS.

Cause removed from Jasper chancery court to Federal court at Knoxville.

To save expense of certified copies of office papers, it is agreed that in March, 1872, an action of ejectment was commenced in the Marion County circuit court, by J. C. Haselton and William O. Giles, against John Badge, Eugene Eaton, A. C. Eaton, Erasmus Alley, V. A. Gaskill and wife, H. L. Gaskill, to recover all the lands described
293 or sold in the deed of E. Alley to J. C. Haselton & J. Holmes Agnew, dated the 7th of January, 1859. The main object was to recover the SE. ¼, sec. 3 in the 2d fr. T. 6 R., &c., and other lands not described in the sale under the vendor's bill, filed by E. Alley against Haselton and Agnew. Soon thereafter, plaintiffs filed their bill in the Marian County chancery court, to set up the said deed as a lost deed. In its registration the said SE. ¼ of sec. 3 did not appear. Afterwards the deed was found by Haselton in his safe, in New York, and the chancery suit dismissed. Defendants put in a plea of not guilty to the ejectment suit. Haselton in 1859 conveyed his interest to said Giles in the land described in the deed, dated 30th December, 1859, marked No. 1 of this agreement, J. Holmes Agnew conveyed his interest in the lands described in his deed to Sam'l J. Agnew, dated 8th Dec'r, 1859, marked No. 2, in this agreement. Sam'l J. Agnew conveyed his interest to J. C. Haselton in the same lands described in his deed, dated June 22, 1866, marked No. 3, in this agreement. William O. Giles conveyed the lands in his deed described to J. C. Haselton, dated 29th May, 1873, marked No. 4 in this agreement, and all of said sev-

294 eral deeds are part of this agreement. After the conveyance of the lands described in the deed of Giles to Haselton, and in the lands described in the deed of J. Holmes Agnew's heirs to Haselton as an exhibit to William Hall's deposition the suit was dismissed as to Giles. The suit was continued from term to term, waiting a trial, till July term of the court in 1875, on the 8th of July, when it was dismissed by plaintiff. Such are the facts. It is agreed that this agreement & exhibits made be read on the trial so far as the same may be competent, material, or relevant.

Sept. 4, 1879.

NASH. H. BURT,
Of Counsel for Defendants.
W. H. DEWITT,
Of Counsel for Compl'ts.

(Endorsed:) V. A. Gaskill & wife vs. Bartow Iron Co. et als. Statement of facts as to ejectment suit. Filed with exhibits Sept. 10, 1879. A. R. Humes, clerk.

Exhibit 1, *to statement.*

Deed—warranty.

This indenture, made the thirtieth day of December, in the year one thousand eight hundred and fifty-nine, between James C. Haselton, of Riverdale, Westchester County, & State of
295 New York, party of the first part, and William O. Giles, of Yonkers, Westchester County, State of New York, party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of five thousand dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents, doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the equal undivided half part of the following-described land situate in Marion County, State of Tennessee, to wit, the northeast & northwest quarters of section twenty-seven (27); the southeast quarter of section twenty-one (21); the northeast quarter of section twenty-eight (28), and the southeast quarter of section twenty-two (22); all in first fractional township and sixth range west of the basis line in the Ocoee district, containing one thousand acres.

296 Also the one undivided fourth part of the following-described lands, to wit, the northwest quarter of section one (1) (subject to a lease for five years to Walker & Spencer, the benefit of which to the extent of said Haselton's interest is hereby conveyed). Also forty acres being the northwest corner or fourth of the southeast quarter of section ten (10); the northeast quarter of section three (3); the southeast quarter of section two (2); the northwest fourth of the southeast quar. of section two (2); the northwest quarter & the remainder previously we granted, being 120 acres of the northeast quarter of section ten (10); the northwest corner of the southeast quarter of section ten (10), and the remainder previously we granted, being 120 acres of the southwest quarter of section nine (9); the east half of the southeast quarter of section ten (10); the northeast fractional quarter of section fifteen (15),

being 38 acres, all in the second fractional township & sixth range west of the basis line in the Ocoee district & all containing 1,118 acres, subject to the incumbrances for the original purchase not paid. Together with all and singular, the tenements, hereditaments and appurtenances thereunto, belonging, or in any wise appertaining and the rever-
297 sion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whotsoever, as well in law as in equity of the said party of the first part of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said James C. Haselton & his heirs, the said premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part, & his heirs, and against all and every person and persons whomsoever lawfully claiming, or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set his hand and seal, the day and year first above written.

J. C. HASELTON. [SEAL.]

Sealed and delivered in the presence of—
Z. PLATT.
S. B. SMITH.

298 STATE OF TENNESSEE,
Marian County:

I, J. D. Thach, register for said county, certify that the foregoing deed of conveyance, together with the commissioner's certificate, was received and noted for registration on the 9th of January, 1860, at eleven o'clock a. m. and registered in book H, pages 408 and 409.

Witness my hand at office in Jasper, this 9th January, 1860.

J. D. THACH, *Register*,
By W. BYRNE, *D. R.*

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

Be it remembered that on this thirty-first day of December, one thousand eight hundred and fifty-nine, before me, Zephaniah Platt, a commissioner in and for the State of New York, appointed by the governor of the State of Tennessee to take the acknowledgment and proof of the execution of deeds or other conveyances, or leases or of any contract, letter of attorney or other writing under seal or not, to be used and recorded in said State of Tennessee; also to administer oaths
299 and take and certify depositions to be used in suits pending in any of the courts of said State, personally appeared at my office in the city of New York, James C. Haselton to me well known & known to be the person described in and who executed as party of the first part, the annexed instrument of writing, being a warranty deed, dated Dec. 30, 1859, of lands in Marion County, Tennessee, and acknowledged that he executed the same as and for his free act and deed for the consideration and purposes therein expressed, and desired the same to be recorded as such.

In testimony whereof, I have hereto set my hand and affixed my official seal, the day and the year first above mentioned.

[SEAL.] Z. PLATT,
Commissioner for Tennessee.

(Endorsed:) James C. Haselton to William O. Giles. Dated 30 December, 1859. Deed No. 1. Received for registration the 9th January, 1860, at 11 o'clock a. m.

Exhibit 2 to statement.

Warranty deed.

This indenture, made the eig'th day of December, in the year
300 of our Lord one thousand eight hundred and fifty-nine, between, J. Holmes Agnew, of Yonkers, State of New York, party hereto of the first part, and Samuel J. Agnew, of Chattanooga, State of Tennessee, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five thousand dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same, by these presents hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all the equal undivided half of all the following described tracts, pieces, & parcels of land, lying & being in Marian County, State of Tennessee, to wit, the northeast & northwest
301 quarters of section twenty-seven (27); the southeast quarter of section twenty-one (21); the northeast quarter of section twenty-eight (28); and the southeast quarter of section twenty-two (22); all in the first fractional township and sixth range west of the basis line, in the Ocoee district, containing one thousand acres; also the undivided half of the northwest quarter of section one (1) subject to a lease for 5 years to Walker & Spencer, the benefit of which lease to the extent of J. H. Agnew's interest, from this date, is hereby conveyed; also the undivided half of the following parcels, to wit, forty acres, being the northwest corner or fourth of the southeast quarter of section ten (10), the northeast quarter of section three (3), the southeast quarter of section two (2), the northwest fourth of the northeast quarter of section two (2), the northwest quarter and the remainder, previously we granted, being 120 acres of the northeast quarter of section ten (10), the northwest corner of the southeast quarter of section ten (10), and the remainder previously we granted, being one hundred & twenty acres of the southwest quarter of section nine (9), the east half of the
302 southeast quarter of section ten (10), the northeast fractional quarter of section fifteen (15), being thirty-eight acres, all in the second fractional township and sixth range west of the basis line, in the Ocoee district, containing in said tracts one thousand one hundred & eigtheen acres. The undivided half of all the lands above described are hereby intended to be conveyed, being in all seven hundred & seventy-nine & a half acres, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and, also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described

premises, with the appurtenances unto the said party of the second part, his heirs and assigns, to his & their own proper use,
303 benefit and behoof forever, and the said J. Holmes Agnew for himself & his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said J. Holmes Agnew at the time of the sealing and delivery of these presents is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular, the above granted, bargained, and described premises, with the appurtenances, and hath good right, full power and lawful authority to grant, bargain, sell, and convey the same, in manner and form aforesaid, and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, his heirs or assigns, or of any other person or persons, lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates,
304 judgments, taxes, assessments and encumbrances of what nature or kind soever, and also that the said party of the first part, and his heirs, and all and every other person or persons whatsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns or their counsel learned in the law, shall be reasonably devised, advised, or required. And the said J. Holmes Agnew, for himself & his heirs, the above described and hereby granted and released premises, and every part and
305 parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

J. HOLMES AGNEW. [SEAL.]

Sealed and delivered in the presence of—

The word "and" & the word "we" mentioned on first page, and the words "being five hundred and fifty-nine acres" being erased before signed.

Z. PLATT,
WM. BETTS, JUN'R.

STATE OF TENNESSEE,
Marian County:

I, J. D. Thach, register of said county, certify that the foregoing deed of conveyance, together with the clerk's certificate, was received and

noted for registration the 15th day of December, 1859, at 1 o'clock p. m., and registered in book "H," pages 387, 388, & 389. Witness my hand, at office in Jasper, this 15th day of Dec., 1859.

J. D. THACH, *Register*,
By W. BYRNE, *D. R.*

306 UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

Be it remembered that on this eighth day of December, A. D. one thousand eight hundred and fifty-nine, before me, Zephaniah Platt, a commissioner in and for the State of New York, appointed by the governor of the State of Tennessee to take the acknowledgment and proof of the execution of deeds or other conveyances, or leases, or of any contract, letter of attorney, or other writing, under seal or not, to be used and recorded in said State of Tennessee; also to administer oaths and take and certify depositions to be used in suits pending in any courts of said State; personally appeared at my office, in the city of New York, J. Holmes Agnew, with whom I am personally acquainted, & whom I know to be the person described in and who executed as party of the first part the annexed instrument of writing, being a deed of this date to S. J. Agnew for lands in Marian County, and acknowl-
307 edged that he executed the same as and for his free act and deed for the consideration and purposes therein expressed, and desired the same to be recorded as such.

In testimony whereof I have hereto set my hand and affixed my official seal the day and year first above mentioned.

Z. PLATT, [SEAL.]
Commiss'n for Tennessee.

(Endorsed:) J. Holmes Agnew to S. J. Agnew. Dated 8 Dec., 1859. Deed. No. 2. Rec'd for registration 15th Dec., 1859, 1 o'clock p. m.

Exhibit No. 3 to statement.

Quitclaim deed.

This indenture, made the twenty-second day of June, in the year one thousand eight hundred and sixty-six, between Samuel J. Agnew, of the city, county, and State of New York, of the first part, and James C. Haselton, of the same place, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released, and quitclaimed, and by these presents doth remise, release, and quitclaim unto the said party of the
308 second part, and to his heirs and assigns forever, all the equal undivided half part of the following-described land, situate in Marian County, Tennessee, to wit, the northeast and northwest quarters of section twenty-seven (27), the southeast quarter of section twenty-one (21), the northeast quarter of section twenty-eight (28), and the southeast quarter of section twenty-two (22), all in the first fractional township & sixth range west of the base line in the Ocoee district, containing one thousand acres; also the one undivided fourth part of the following-described lands, to wit, the northwest quarter of section one (1), subject to a lease for five years to Walker & Spencer, the benefit of

which, to the extent of said Agnew's interest, is hereby conveyed; also forty acres, being the northwest quarter or fourth of section three (3), the southeast quarter of section two (2), the northwest fourth of the northeast quarter of section two (2), the northwest quarter and the remainder previously we granted, being 120 acres of the northeast quarter of section ten (10), the northwest corner of the southeast quarter of section ten (10), and the remainder previously we granted, being 120 acres of
309 the southwest quarter of section nine (9); the east half of the southeast quarter of section ten (10); the northeast fractional quarter of section fifteen (15), being 38 acres, all in the second fractional township and sixth range west of the base line in the Ocoee district, & all containing 1,118 acres, and subject to the incumbrances for the original purchase not paid, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto
310 set his hand and seal the day and year first above written.

S. J. AGNEW. [SEAL.]

Sealed and delivered in the presence of—
Z. PLATT.
WM. RAYMOND.

STATE OF NEW YORK,
City & County of New York, ss:

On this twenty-second day of June, in the year one thousand eight hundred and sixty-six, before me, the undersigned, a commissioner for the State of Tennessee, in New York, for taking & certifying the acknowledgments of deeds & other instruments to be recorded in said State, personally appeared Samuel J. Agnew, known to me to be the individual described, and who executed the foregoing instrument, and acknowledged that he executed the same. Witness my hand & my official seal.

Z. PLATT, [SEAL.]
Commissioner of Tennessee, in New York.

(Endorsed:) Samuel J. Agnew to James C. Haselton. Quitclaim deed. Dated June 22, 1866. No. 3.

Exhibit No. 4 to statement.

311 For a valuable consideration, duly paid before the delivery hereof, I have this day remised, released, and quitclaimed, and by these presents doth remise, release, and quitclaim to J. C. Haselton, his heirs and assigns forever, all the equal undivided half part of the following-described land, situate in Marian County, Tennessee, to-wit, the northeast and northwest quarters of section twenty-seven (27); the southeast quarter of section twenty-one (21); the northeast

quarter of section twenty-eight (28), and the southeast quarter of section twenty-two (22); all in the first fractional township & sixth (6th) range west of the basis line, in the Ocoee district, containing one thousand acres. Also the one undivided fourth part of the following-described lands, to wit, the northwest quarter of section one (1); also forty acres, being the northwest quarter of or fourth of section three (3); the southeast quarter of section two (2); the northwest quarter and the remainder previously we granted, being 120 acres of the northeast quarter of section (10); the northwest corner of the southeast quarter of section (10), and the remainder previously we granted, being 120 acres of the southwest quarter of section (9) nine; the
312 east half of the southeast quarter of section ten (10); the northeast fractional quarter of section fifteen (15), being 38 acres; all in the second fractional township, and sixth range west of the basis line in the Ocoee district, and all containing 1,118 acres, with the appurtenances, and all the estate, right, title, and interest I have. To have and to hold the same to the said James C. Haselton, his heirs and assigns forever.

In witness whereof I have this day hereunto set my hand and seal this the 29th day of May, 1873.

WM. OGDEN GILES. [SEAL.]

Sealed & delivered in presence of—
J. B. NONES.
JAMES TAYLOR.

STATE OF NEW YORK,
City & County of N. York, ss:

Be it remembered that on this 29th day of May, A. D. 1873, before me, the subscriber, Joseph B. Nones, commissioner of the State of Tennessee, for New York, duly commissioned & qualified according to law and residing in said city of New York, personally came William Ogden Giles, to me personally known, and known to me to be the same person described in and who executed the foregoing instru-
313 ment, & & acknowledged to me that he executed the same as his free & voluntary act & deed, for the uses & purposes therein named and desired the same might be recorded as such.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 29th day of May, 1873.

J. B. NONES,
Commissioner of the State of Tennessee for N. York,
No. 91 Duane st., corn. B'dway.

(Endorsed:) William O. Giles vs. J. C. Haselton. Deed. Dated 29th May, 1873. No. 4. Reg's fee, $1.75.

Received for registration the 24th day of March, 1876, at 5 o'clock p. m.

W. BYRNE, *Reg'r.*

Agreement of parties.

In the circuit court of the United States for the eastern district of Tennessee.

V. A. GASKILL & WIFE, H. L. GASKILL,
vs.
J. C. HASELTON ET ALS. } No. 651.

In this case it is agreed between complainants & defendants that in the suit of V. A. Gaskill & wife H. L. Gaskill, as complainants, against John Badge, A. C. Eaton, E. G. Eaton, James C. Haselton, &
314 others, as defendants, brought Dec'r 5th, 1874, in which the chancery court of Hamilton County, Tennessee, *and* decided in favor of complainants in that court, office copies of the decrees of the supreme court of Tennessee, at Knoxville, in the case of E. Alley v. J. Homes Agnew, J. C. Haselton, et als.; one ordering sale of certain lands and the other vesting title thereto in Mrs. H. L. Whiteside (compl't in this case), as purchaser, and of the writ of possession issued from said court, and return of the sheriff of Marian County endorsed, placing her in possession of the same, &c., were read in evidence; that the papers hereto attached as part of this agreement, (A,) (B,) (C,) are full, true, & perfect copies of said decrees and writ of possession. It is also agreed the paper hereto attached as part hereof, marked (D), is a true copy of the deed to certain lands therein described made to J. Holmes Agnew & James C. Haselton, which was also read as evidence in said suit. And it is agreed that the paper hereto attached as part hereof, marked (E), is a full, true, & perfect copy of the original written
315 lease of what is called the "Vulcan coal mines," made by compl't H. L. Whiteside to John Badge & Albert C. Eaton, which took effect from the 1st day of June, 1870 (in which E. G. Eaton in writing acknowledged himself a partner, &c.), which orginal was also read as evidence in said suit. It is also agreed that paper marked (F), hereto attached, as part hereof, is a full, true, & perfect copy of the original deed made by Erasmus Alley to compl't. H. L. Whiteside, of the property therein described, dated 26' April, 1870, as well as of the orignal probate and certificates of registration thereof, and that said original deed with its probate and certificates of registration were read as evidence on the trial of said suit. And also the paper hereto attached, marked (G), as part hereof, is a perfect copy of the deposition of W. Byrne, register of Marian County, Tennessee, duly sworn to and given by him in said suit; that the original was also read compl'ts as evidence in that suit on the trial. And the paper marked (H) and the one marked (I), hereto attached and made part hereof, are exact copies, re-
316 spectively, of the decree pronounced by the chancellor, and of the writ of possession issued thereunder in said suit, and of the officer's return thereon. It is also agreed that the paper hereto attached, marked (J), is an exact copy of the deposition of J. P. McMillin, duly & regularly given in said chancery suit, and read on the trial by complainants as evidence in their behalf.

Now, to save costs & expenses in taking the depositions referred to above, and in obtaining office copies of the other evidence hereinbefore enumerated, copies of which are made part hereof; that all the copies hereinbefore mentioned as attachments hereto as part hereof, together with this agreement, may be offered and read as evidence in behalf of complainants on the trial of this suit before the Federal court, if the

subject-matter of the same or matter thereof are, or if either of them is competent, material, or relevant evidence in the cause; and no objection shall be made thereto by defendants or either of them because
317 not filed in time, or that any originals is not produced or for any cause whatever, except as to the competency, relevancy, and materiality of the matter of the same as evidence in the cause.

It is also agreed that as to the question of local jurisdiction of said chancery *suit*, the following is a true copy of the written agreement of defendants endorsed on the original bill in that cause.

"As atto. & solicitor for respondents I agree that this bill be filed in the chancery court, at Chattanooga, free from all objections as to the court in which it should be properly filed in point of local jurisdiction.

"Dec'r, 1874.

"NASH. H. BURT,
"*Att'y for Haselton & Badge & Eaton.*"

It is now further agreed as evidence in the present suit that no pleadings filed or other objection made by demurrer or otherwise by any of the defendants to the local jurisdiction of the court in that case, but that they answered and submitted to the jurisdiction of the court.

It is also further agreed that in the chancery suit aforesaid on the trial one E. Alley, after being duly sworn, gave his deposition in that
318 suit in behalf of complainants, and that his said deposition was read before the chancellor on the trial as evidence for complainants.

It is also agreed that the paper hereto attached, No. 1, with its Exhibit A attached is a full, true, and perfect copy of his said deposition including questions and answers; and that the said E. Alley some time after he gave his said deposition, and long before the present date, died. It is also agreed that Mrs. H. L. Whiteside (lately Mrs. H. L. Gaskill) may offer in evidence on the trial of this case the said copy of E. Alley's deposition given in the other case named, and that the same may be read on the trial in this case as evidence for her, if the proof, or the matter thereof, is competent, material, or relevant.

And no objection shall be made or exception taken to the above evidence because it is a copy of the deposition, not certified to officially, or proven in the regular mode, nor because not filed in time, by leave of the court, or for any other cause whatever, except as to competency, relevancy, or materiality of the matter of it as evidence in this
319 case. And the alleged title of complainant H. L. to SE. ¼ of section of the land where the Vulcan mines are situated was called in question in said chancery suit, in the mode and to the extent shown in the answers, respectively, of defendants Haselton & Badge & Eaton; and exhibits hereto attached No. 3, No. 4, No. 5, No. , are exact copies of the original bill and answers thereto in said suit, which may be read in the trial here without procuring of-
A. R. B. fice copies, as far as the same may be relevant & competent to show the issues in that case on the subject of title, or other point, on any question in this suit.

The other subsequent pleadings in that case present no question as to the title to *to* the said SE. ¼ of section 3, except what is plead & shown in reference thereto in the original pleadings.

And it is further agreed that the defendants in the case of Gaskill & wife against Badge & Eaton & others in the chancery court at Chattanooga appealed by the defendants in February, 1878, to the supreme court of the State at Knoxville. That the whole case was ap-

320 pealed from, and which appeal is pending and undecided in the supreme court. Copies of the other decrees made in said chancery suit are hereto attached, marked 20, 21, and may be read as evidence on the trial of this case if competent, relevant, or material.

This Sept. 4, 1879.

W. H. DE WITT,
Of Counsel for Complainant.
NASH. H. BURT,
Of Counsel for Defendants.

(Endorsed:) Filed with exhibits Sept. 10, 1879. A. R. Humes, clerk

Exhibit "A" to agreement.

STATE OF TENNESSEE:

Supreme court at Knoxville, September term, 1866.

TUESDAY, *November 27th*, 1866.

Present & presiding Hon. J. O. Shackelford, Hon. Sam. Milligan, & Hon. Alvin Hawkins, judges, &c.; when, among other thinks, the following were had, to wit:

Decree.

ERASMUS ALLEY
vs.
J. HOMES AGNEW, JAMES C. HASELTON, & Samuel J. Agnew.

Be it remembered that in this 27th day of November, 1866, this cause came on to be heard before the honorable judges of the supreme
321 court of Tennessee upon the transcript of the chancery court at Jaspar; and it appearing to the court that there is no error in the decree of the chancellor, the same is in all things affirmed. And it appearing to the court that defendants James Homes Agnew & James C. Haselton are indebted to complainant in the sum of $5,985.91, including interest, for the lands hereinafter described and for which complainant has a lien as vendor thereof, which lands are situated and described as follows, to wit, the northeast & northwest quarter of section twenty-one; the northeast quarter of section twenty-eight; and the southeast quarter of section twenty-two; all in first fractional township. Also the northwest quarter of section two, and one-fourth of the northeast quarter of section two, in the second fractional township. Also the undivided half of the northwest quarter of section in said second fractional township; and the undivided half of forty acres, being the northwest corner or fourth of the southeast quarter of section eleven; the southeast quarter of section two; the northwest fourth of the northeast
322 quarter of section two; the northwest quarter and the remainder previously we granted; being one hundred & twenty acres of the southwest quarter of section nine; the last half of the southeast quarter of section ten; and the northeast fractional quarter of section fifteen, being thirty-eight acres in the said second fractional township; and all the foregoing lands being in the sixth range west of the basis line in the Ocoee district, Marian County, Tennessee, and subject to the right of way and privileges of water to and for the use of the Nashville &

Chattanooga Railroad Company, being the same lands conveyed to said defendants by deed of complainant on the 29th day of January, 1859, with the reservations therein contained. And it further appearing that defendant Samuel J. Agnew, purchased an interest in said lands with notice of the aforesaid lien of complainant:

It is therefore decreed by the court, that complainant recover of the said J. Holmes Agnew & James C. Haselton the said sum of $5,985.91, and the costs of this court and the chancery court for which execution may issue, and unless the same is paid into court within one
323 month, the clerk of this court, after advertising the same for thirty days in some public newspaper published at Chattanooga, that being the point nearest said lands at which a newspaper is published, will proceed to sell the same at Whiteside depot, on the Nashville & Chattanooga Railroad in the said county of Marian, and in the vicinity of said lands on a credit of one and two years to the highest bidder at public outcry, taking notes bearing interest from date with sufficient sureties, and retaining a lien for the purchase-money. He will require however, $150.00 of the purchase-money to be paid down to pay costs, and take notes in equal installments for the residue as aforesaid; and on special application of complainant, it is ordered that said land be sold in bar of the equity of redemption. They may be sold in a body or in parcels as may in the judgment of the clerk best suit the interest of the parties.

The moneys when collected will be applied, first, to the payment of the costs of the cause in this court and in the chancery court; second,
324 to the payment of complainant's said lien and its interest, and the residue, if any, will be paid to defendants James C. Haselton and Samuel J. Agnew equally. The clerk will report his action in the premises to the next term of this court.

STATE OF TENNESSEE:

I, M. L. Patterson, clerk of the supreme court of Tennessee, at Knoxville, do hereby certify that the foregoing is a full, true, & correct copy of the decree in said cause as the same appears from the record now in my office.

Given under my hand and the seal of said court, at office in Knoxville, Tennessee, this December 10th, 1869.

M. L. PATTERSON, *Clerk.*

STATE OF TENNESSEE,
Marian County:

I, W. Byrne, register of said county, certify that the within copy of decree, together with the certificate of the clerk of the supreme court at Knoxville, was received & noted for registration the 31st day of Oct., 1874, at 4 o'clock p. m. and registered in book K, pages 603 & 604.

Witness my hand, at office in Jaspar, this 31st day of Oct., 1874.

W. BYRNE, *Reg.*

325 *Exhibit B to agreement.*

Copy of decree.

ERASMUS ALLEY
vs.
J. HOMES AGNEW, JAMES C. HASELTON, SAMUEL J. Agnew.

Be it remembered that on this 18th day of October, 1876, this cause came on to be heard before the honorable judges of the supreme court of Tennessee upon the report of the clerk of this cause, made to the present term, which being unexcepted to is in all things confirmed, and it appearing therefore that M. L. Patterson, the clerk of this court, in obedience to & in compliance with the decree pronounced in this cause at the last term of this court after being advertised, the same as required by law decreed, to sell to the highest and best bidder at public outcry, at Whiteside depot, on the Nashville & Chattanooga Railroad, on the 10th day of May, 1867, the lands described in the pleadings and decrees in this cause, to wit, the northeast and northwest quarter of section twenty-one; the northeast quarter of section twenty-eight; and the southeast quarter of section twenty-two; all in first fractional township. Also the northwest quarter of section two; and one-fourth
326 of the east quarter of section four in the second fractional township. Also the undivided half of the northwest quarter of section one in said second fractional township, and the undivided half of forty acres, being the northwest corner or fourth of the southeast quarter of (eleven); the southeast quarter of section two; the northwest fourth of the northeast quarter of section two; the northwest quarter and the remainder previously we granted, being one hundred and twenty acres of the northeast quarter of section ten; the northwest corner of the southeast quarter of section ten; and the remainder previously we granted, being one hundred & twenty acres of the southwest quarter of section nine. The east half of the southeast quarter of section ten; and the northeast fractional quarter of section fifteen, being thirty-eight acres in the said second fractional township, and all the foregoing lands being in the sixth range west of the basis line in the Ocoee district, Marian County, Tennessee, & subject to the right of way & privilege of water to & for the use of the Nashville & Chattanooga
327 Railroad Company, at Whiteside depot, on the Nashville & Chattanooga Railroad, at public outcry to the highest bidder, and struck off and sold the same to Mrs. H. L. Whiteside, she being the highest and best bidder, for five thousand five hundred dollars ($5,500.00). She paid down one hundred & fifty dollars, the amount required to be paid in hand by decree, & executed her two several notes, one for two thousand six hundred & seventy-five dollars ($2,675.00), payable in two years after date with interest from date, with J. S. Gillespie, W. L. Eaken, & S. A. Key as her securities; the second note for two thousand six hundred & seventy-five payable in with interest from decree, with J. S. Gillespie, W. L. Eaken, & S. A. Key as her security, and a lien was retained on said lands until the purchase-money would all be fully paid. All of which is most respectfully submitted.

May 1st, 1867.

M. L. PATTERSON,
Clerk of the Sup. Court, at Knoxville.

That at said sale Mrs. H. L. Whiteside, being the highest and
328 best bidder, became the purchaser of said lands and tenements at the price of five thousand five hundred dollars, of which she paid in hand the sum of one hundred and fifty dollars, & executed her two several notes each for two thousand six hundred & seventy-five dollars bearing date 10th of May, 1867, with good & sufficient securities and bearing interest from date, due in twelve months, and the other in two years from date, a lien being retained on said lands for the purchase-money. It is therefore decreed by the court that the sale be in all respects confirmed, and that all the rights, title, and interest of complainants and defendants in & to said lands so sold & described as aforesaid be divested out of them & vested in said H. L. Whiteside, her heirs & assigns, in fee-simple, subject to a lien for the unpaid purchase-money, & when the same is paid in she will be entitled to a muniment of title; and a writ of possession is awarded her to place her in possession of land so purchased as aforesaid. The money as collected
329 will be applied as described by decree of the last term. And it appearing from the report of the clerk by unavoidable casualty it was impossible to make the sale at the date first advertised, so that it became necessary of again advertising said sale, he is therefore authorized, out of the money in his hands or to come to his hands in this cause, to pay the usual & proper fees for both advertisements.

STATE OF TENNESSEE:

I, M. L. Patterson, clerk of the supreme court of Tennessee, at Knoxville, do hereby certify that the foregoing is a full, true, & correct copy of the decree in said cause, as the same appears from the record now in my office, given under my hand & the seal of said court at office in Knoxville, Tennessee, this Dec. 10, 1869.

M. L. PATTERSON, *Clerk.*

Filed in office & noted for registration the 22nd day of August, 1870, at 6 o'clock p. m.

W. J. JOHNSTON, *Register.*

STATE OF TENNESSEE,
Marian County:

I, W. Byrne, register of said county, certify that the foregoing is a true & perfect copy of the decree of the supreme court in the
330 case of E. Alley vs. J. H. Agnew & others, as appears of record in my office, book "I", pages 517, 518, 519.

Witness my hand, at office in Jaspar, this 15th day of Dec., 1874.

W. BYRNE, *Reg.*

Register's fee for above, $2.00; former service, $2.00—$4.00

Exhibit "C" to agreement.

STATE OF TENNESSEE:

Supreme court at Knoxville.

To the sheriff of Marian County, greeting:

Whereas in a suit recently determined in the supreme court held for the eastern division of said State at Knoxville, between Erasmus Alley, plaintiff in error, and J. Holmes Agnew, James C. Haselton, and Samuel J. Agnew, defendants in error, it was ordered by the court that a

writ of possession issue to put the said Harriet L. Whiteside in possession of the lands mentioned in the pleadings, which are therein described as follows, to wit: The NE. & NW. qrs. of section 21; the NE. qr. of sec. 28, and the SE. qr. of sec. 22; all in first fractional township; also the NW. qr. of sec. 2, and ¼ of the E. qr. of sec.
331 2, in the 2d fr. township; also the undivided half of the NW. ¼ of sec. one, in 2d fr. township, and the undivided ½ of 40 acres, being the NW. corner or ¼ of the SE. qr. of sec. ten; the SE. qr. of sec. 11; the SE. qr. of sec. 2; the NW. ¼ of the NE. qr. of sec. 2; the NW. qr., and the remainder previously we granted, being 120 acres of the NE. qr. of sec. 10; the NW. corner of the SE. qr. of sec. 10, and the remainder previously we granted, being 120 acres of the SW. qr. of sec. 9; th' E. ½ of the SE. qr. of sec. 10, and the NE. fr. qr. of sec. 15, being 38 acres in the said 2d fractional township; all the foregoing lands being in the sixth range, west of the basis line in the Ocoee district, Marian County, Tennessee, and subject to the right of way and privileges of water, to and for the use of the Nashville & Chattanooga Railroad Company:

These are therefore to command you, the sheriff aforesaid, that you forthwith put the said Harriet L. Whiteside, or her authorized agent, in full, peaceable possession of the aforesaid tracts of land, and how you shall have executed this writ you will make known by your return hereon to the honorable supreme court to be held at Knoxville the second Monday in September next.

332 Witness M. L. Patterson, clerk of said court, at office in Knoxville, the second Monday in September, 1867.

M. L. PATTERSON, *Clerk.*

(Endorsed:) Executed the within writ on the premises this day by placing Mrs. H. L. Whiteside, through agent J. P. McMillin, in possession of the lands herein described, according to law, this 27th day of Dec'r, 1867.

R. A. TUCKER,
Dep't Sheriff of Marian County.

It is agreed that the foregoing copy may be read as evidence in lieu of a certified copy of the original from the supreme court, subject to exceptions only for competency and relevancy.

(Endorsed:) Copy of writ of possession to Mrs. H. L. Whiteside. C.

Exhibit D to agreement.

I, Erasmus Alley, of Marian County, Tennessee, do hereby bargain, sell, & convey to J. Holmes Agnew & James C. Haselton, of Yonkers, State of New York, for the consideration of seven thousand five hundred dollars, thirty-five hundred dollars to me in hand paid, the receipt of which I
333 hereby acknowledge. The residue is secured to me by two several notes each for two thousand dollars payable in the city of New York, one at six months & the other at twelve months, both drawing interest from date, the tracts & parts of tracts of land hereinafter described, lying in the county of Marian, State of Tennessee, to wit: The northeast & northwest quarters of section twenty-seven, the southeast quarter of section twenty-one, the northeast quarter of section twenty-eight, and the southeast quarter of section twenty-two, all in first fractional township & sixth range west of the basis line in the Ocoee

district; also the northwest quarter of section two, & one-fourth of the northeast quarter of section two, both in second fractional township, sixth range west of the basis line in the Ocoee district, containing one thousand acres. Also the undivided half of the northwest quarter of section one (subject to a lease for five years to Walker & Spencer, the benefit of which lease to the extent of my interest from this date is hereby conveyed). The undivided half of the following parcels: Forty acres, being the northwest corner or fourth of the southeast quarter of section ten; the southeast quarter of section three;
334 the southeast quarter of section two; the northwest fourth of the northeast quarter of section two; the northwest quarter & the remainder previously *we* granted, being 120 acres of the northeast quarter of section ten; the northwest corner of the southeast quarter of section ten, & the remainder previously *we* granted, being 120 acres of the southwest quarter of section nine; the east half of the southeast quarter of section ten; the northeast fractional quarter of section fifteen, being thirty-eight acres, all in the second fractional township & sixth range west of the basis line in the Ocoee district, containing in said tract one thousand one hundred & eighteen acres, the undivided half of which is intended to be hereby conveyed, being five hundred & fifty-nine acres. To have & to hold the land & premises hereby conveyed, with all mines & minerals, unto the said J. Holmes Agnew & James C. Haselton, their heirs and assigns, forever. The title to which I do, for myself, my heirs & assigns & legal representatives, warrant unto the said J. Holmes Agnew & James C. Haselton, their heirs & assigns, against the lawful claims of all persons
335 whatever. The right of way & of water for the use of the Nashville & Chattanooga Railroad are, however, reserved for said road.

Witness my hand & seal, Jan'y 7th, 1859.

Test: E. ALLEY. [SEAL.]

Witness, G. T. SWIFT,
REESE B. BRABSON.

STATE OF TENNESSEE,
Marian County:

Personally appeared before me, W. Byrne, clerk of the county court for said county, E. Alley, with whom I am personally acquainted, who acknowledged that he executed the within deed of conveyance on the day it bears date for the purposes therein contained and expressed.

Witness my hand, at office in Jaspar, this 10th day of March, 1859.

W. BYRNE, *Clk.*

STATE OF TENNESSEE,
Marian County:

I, J. D. Thach, register for Marian County, certify that the foregoing deed of conveyance, together with the clerk's certificate, was received & noted for registration 10th day of March, 1859, & registered in book H, pages 309 & 310.

Witness my hand, at office in Jaspar, this 2nd day of April, 1859.

J. D. THACH, *Reg'r*,
By W. BYRNE, *D. R.*

(Endorsed:) No. 1587. (D.)

336 *Exhibit E to agreement.*

We, Harriet L. Whiteside, for herself and as executrix of James A. Whiteside, dec'd, of the first part, and John Badge and Albert C. Eaton, of the second part, have this day made and entered into the following agreement, that is to say, the party of the first part leases to the party of the second part for the period of five years from and after the 1st day of June, 1870, with the privilege of ten (10) years from said date on the same terms, her interest in the section of land now occupied by the party of the second part, and upon which the coal mines known as the Vulcan mines are situated, in Marian County, Tennessee; the interest of the party *of the party* of the first part in said section of land, being an undivided interest of one-half in the whole section, and an interest of one-third or one-fourth in the other undivided interest of one-half. The party of the second part accepts this lease only for the purpose of mining coal in and upon said land, with the rights, privileges, and immunities necessary and incident to mining, transporting, & vending coal in, upon, & over said land,
337 with the use of all timber and other material upon said section and the quarter-sections of land, immediately adjoining, owned by the party of the first part, which may be necessary and required for the proper improvement and development of said coal mines; or for erecting buildings, tramways, tracks, or other works about said mines or for dwelling, outhouses, and fire-wood for the owners, lessees, or operatives of said mines, but no timber or material other than coal is to removed from said lands.

The party of the second part bind themselves to mine for coal upon said lands in a proper, good, & mining-like manner, and secure and maintain the mines and openings or entrances to the same in such a manner as is customary and proper in the best worked mines; and bind themselves to do no injury to the lands except such as may be necessary to its proper use and enjoyment, for the purpose of mining & vending coal thereon. The party of the second part bind themselves to pay all taxes that are or may be assessed upon said land during the term of this lease; and to pay the party of the first part twenty-five (25) cents per ton for all coal mined in and upon said lands dur-
338 ing the term of this lease, and agree to pay, whether mined or not, twenty-five (25) cents per ton for six hundred tons for each and every month during the term or continuance of this lease, payment to be made on or before the 15th day of each month for the coal mined (or upon which they have agreed to pay rental) for the month preceding. If more than six hundred tons are mined per month the party of the second part are to pay twenty-five (25) cents per ton for all coal mined in excess of the said six hundred tons per month; and it is expressly understood and agreed that the excess of one month is not to be applied to another and different month in order to make up the minimum of six hundred tons for that month. Payment for said excess over six hundred tons per month is to be made on the 15th day of August, November, February, and May of each year, beginning with the 15th day of August, 1870. It is understood that the party of the first part is to take and receive of the foregoing rents a proportion equal to her interests in the land leased, it being the intention of the parties
339 that at the minimum of six hundred tons per month she should receive a rental of one hundred dollars per month. No demand for rents upon the premises is necessary, but they shall become due & payable as other moneys or debts. A failure to pay said

monthly rental of twenty-five (25) cents per ton upon six hundred tons of coal per month for a period of two months after it becomes due, or a failure to pay said rental of twenty-five (25) cents per ton for all coal mined in excess of said six hundred tons per month for a period of one month after it becomes due may, at the option of the party of the first part, be considered and treated by her as a forfeiture of this lease, upon her giving ten days' notice in writing of her intention to claim and enforce a forfeiture. A failure to pay either of the installments of rents, payable monthly or every three months as aforesaid, may work a forfeiture, and a suit brought to collect the rents shall not effect the right of the party of the first part to claim & enforce a forfeiture. In the event a forfeiture is enforced, buildings, tramways, entries, & houses upon said land are to be & become the property of the party of the first
340 part. The party of the second part will render a statement at the end of each month showing the amount of coal mined during that month, which statement will be sent by mail, or delivered to the party of the first part or her agent. They are also to keep a plan of the working of said coal mines, and at all reasonable hours, said mines and plans thereof are to be kept open for their inspection by the party of the first part, her agent, or any engineer she may employ to inspect the same. The party of the first part reserves the right to enter upon said lands & remove any timber or material not necessary for or used by the party of the second part, in and about said mines or buildings as aforesaid, but she binds herself not to take any timber or material necessary to the working of said mines, nor is she in any way to interfere with the working, opening, or improving of said mines, or the transporting and vending of coal over and on said lands. The party of the second part bind themselves to deliver possession of the premises, at the expiration of this contract of lease, with all
341 the buildings, houses, tramways, tracks, entries, & approaches to said mines upon said land. The entries & approaches to said mines are to be in good condition. This lease is to begin & take effect from the 1st day of June, 1870.

H. L. WHITESIDE.
JOHN BADGE.
ALBERT C. EATON.

Witnesses as to John Badge:
J. A. RANKEN.
J. W. SIMPSON, JR.

STATE OF TENNESSEE,
Hamilton County:

Before me, the undersigned, personally appeared Mrs. Harriet L. Whiteside, one of the makers of the foregoing lease or agreement, with whom I am personally acquainted, and who acknowledged that she executed the foregoing lease or agreement on the day it bears date, for the purposes therein expressed.

Witness my hand & private seal, there being no seal of office at my office in Chattanooga, in said county & State, this 12th day of September, 1870.

J. H. HARDEE, [SEAL.]
Clerk County Court, Hamilton,
By JAS. L. POOL, *D. C.*

NOV. 25TH, 1872.

342 I acknowledge myself a partner in the above lease with Badge & my brother Albert C. Eaton & bound with them by its terms.
E. G. EATON.

Test:
C. R. GASKILLL.

STATE OF TENNESSEE,
Hamilton County:

This day personally appeared before me, R. H. Guthrie, county court clerk for said county, Albert C. Eaton, one of the bargainors in the foregoing instrument of conveyance, with whom I am personally acquainted, & acknowledged that he executed the same for the purposes therein expressed, and R. D. Rankin and J. W. Simpson, two of the subscribing witnesses to the same, being by me sworn, depose & say they are acquainted with John Badge, who, in their presence, acknowledged the execution thereof for himself for the purposes therein expressed.

Witness my hand at office in Chattanooga, this 2nd day of September, 1870, and seal of court affixed.

[SEAL.] R. W. GUTHRIE,
TOM. F. BLACKFORD.

STATE OF TENNESSEE,
Marian County:

343 This is to certify that I, T. K. Rawlings, register of said county, do hereby certify that the within contract & certificates of acknowledgments were duly recorded in book I, pages 523, 524, 525, & 526.

Witness my hand at this office in Jaspar, September 27, 1870.
T. K. RAWLINGS, *Reg.*

Exhibit F to agreement.

Whereas I, Erasmus Alley, of the county of Marian and State of Tennessee, have heretofore been the owner of certain lands on Raccoon Mountain, in said county & State, and did heretofore, to wit, on or about the 29th day of January, 1859, sell certain of said lands to J. H. Agnew & J. C. Haselton, removing a vendor's lien for part of the purchase money, and did thereafter, to wit, on or about the sixth day of November, 1861, enter into an agreement in writing with one James A. Whiteside, of Chattanooga, Tennessee, to whom I was indebted as my accommodation indorser, as therein stated, I having began proceedings in the court of proper jurisdiction to enforce the said vendor's lien, and did give by notice of said agreement to said Whiteside a lien upon my interest in said lands & upon funds to be derived from the enforcement of said vendor's lien; and whereas I afterwards recov-
344 ered a judgment against said Agnew & Haselton for the amount due me on said lands, & obtained a decree for the sale of the same to satisfy said judgment & pay the lien, and said lands were sold in obedience to said decree, and at the sale, which was on or about the 10th day of May, 1867, Harriet L. Whiteside, to whom had been transferred the debt I owed said James A. Whiteside, became the purchaser, and the title was vested in her:

Now therefore I, the said Erasmus Alley, in order to settle any question that may arise as to these matters, and especially to settle any question that might arise from certain discrepances in descriptions of

my said lands now belonging to said Harriet L. Whiteside, in consideration of one dollar to me paid, the receipt whereof is hereby acknowledged, and for other valuable considerations, I do hereby release, relinquish & forever quitclaim unto said Harriet L. Whiteside, and to her heirs and assigns forever all the right, title, & interest I may have had or now have to any lands in the first & second townships and
345 range six, west of the basis line, Ocoee district, & in the vicinity of the Vulcan & Etna mines, and particularly to the lands described as follows, viz: The northeast quarter & northwest quarter of section twenty-seven; the southeast quarter of section twenty-one; the northeast quarter of section twenty-eight; the southeast quarter of section twenty-two; all in the first fractional township and range six, west of the basis line in the Ocoee district; the southeast quarter of section three (3), second (2) township, range six (6) aforesaid; also the northwest quarter of section two & one-fourth of the northeast quarter of section two, both in second fractional township, sixth range aforesaid; also the undivided half of the northwest quarter of section one; also the undivided half of the following parcels of land: Forty acres, being the northwest corner or fourth of the southeast quarter of section ten; the southeast quarter of section eleven; the southeast quarter of section two; the northwest fourth of northeast quarter of section two; the northwest quarter & the remainder previously *we* granted, being one hundred & twenty acres of the northeast quar-
346 ter of section ten; the northwest corner of the southeast quarter of section, and the remainder previously *we* granted being one hundred & twenty acres of the southwest quarter of section nine, east half of southeast quarter of section ten; the northeast fractional quarter of section fifteen; being thirty-eight acres all in second fractional township and range six aforesaid; to have and to hold the same to the said Harriet L. Whiteside & her heirs forever in fee simple. I covenant with said Harriet L. Whiteside that I will forever warrant and defend the title thereto against myself & my heirs or any persons claiming the same by, through, or under me, but no further.

Witness my hand & seal this day of 26th April, 1870.

E. ALLEY. [SEAL.]

In presence of—

STATE OF TENNESSEE,
County of Marian:

Personally appeared before me , clerk of the county & State, Erasmus Alley, with whom I am personally acquainted, he being the maker of the foregoing deed, and acknowledged the execution of the same on the day it bears date, for the purposes therein expressed.

347 Witness my hand, at office in Jaspar, this 26th day of April, 1870.

C. G. BLANSET,
Clerk.

STATE OF TENNESSEE,
County of Marian:

REGISTER'S OFFICE.

day of , 1870, at o'clock m., there was the foregoing deed, with its certificate of acknowledgement and proper United States internal-revenue stamp attached & cancelled, received for registration, & is now of record in my office in book , pages.

Witness my hand at office, in Jasper, the day & date last above written.

Register of Deeds, Marian Co.

STATE OF TENNESSEE,
Marian County:

I, W. J. Johnston, register for said county, do certify that the foregoing deed, together with the certificate of acknowledgement, together with the register's note of fileage, was this day duly recorded in book I, pages 475 & 476.

Witness my hand, at office, this 26th day of April, 1870.

W. J. JOHNSTON,
Register for said County.

Exhibit G to agreement.

In chancery, at Chattanooga, Hamilton County, Tennessee.

V. A. GASKILL & WIFE
vs.
BADGE & EATON & OTHERS.

348 Deposition of WM. BYRNE, taken in the above case, by consent, to be read in evidence:

Int'g. 1. State whether you are the present register of Marian County, Tennessee, and how long you have been acting as such register.

Ans. I am register of Marian County, and have been since Oct., 1872.

Int'g. Please mark and file as Exhibit A a true copy of a deed as appears on the record books of Marian County, Tennessee, said deed being from E. Alley to J. Homes Agnew & J. C. Haselton, and state when said deed was probated.

Ans. I herewith file Exhibit A, and state that it is a true copy of a deed from E. Alley to J. Homes Agnew & James C. Haselton, as appears of record, book H, page 309, 310, in my office. Said deed was probated on 10th day of March, 1859.

Int'g. By whom was said deed recorded?

Ans. By myself, as deputy register.

Int'g. 4. Is there anything on said book H showing when said deed was registered?

Ans. There is no entry showing the date of registration.

Int'g. 5. Is there any other registration on the records of Marian County, Tennessee, of the deed of which Exhibit A is a copy? If so, state in what book and when said registration was made.

349 Ans. There is a registration of the same deed on pages 258 and 259 of book K of the register's books in my office. Said deed was registered about 28th Oct., 1872.

Int'g. 6. State the marginal note appearing on book K of the registration of deeds, opposite the registration of said deed.

Ans. The marginal note referred to reads as follows: "To correct registration on pages 309 & 310, book H."

Int'g. 7. You will file, marked Exhibit B, a true copy of the said deed as recorded in book K, pages 258 & 259, in your office.

Ans. I hereby file, marked Exhibit B, a true copy of the deed from

E. Alley to J. Holmes Agnew and James C. Haselton, as appears of record, book K, pages 258, 259, in my office. Exhibit B.

Deed.—Exhibit A.

E. Alley to J. Homes Agnew, J. C. Haselton.

I, Erasmus Alley, of Marian County, Tennessee, do hereby bargain, sell, & convey to J. Homes Agnew & James C. Haselton, of Yonkers, State of New York, for the consideration of seven thousand five hundred dollars, thirty-five hundred dollars to me in hand paid, the receipt of which I hereby acknowledge—the residue is secured to me by two several notes, each for two thousand dollars, payable in the
350 city of New York, one at six months and the other at twelve months, both drawing interest from date—the tracts & parts of tracts of land hereinafter described, lying in the county of Marian, State of Tennessee, to wit: The northeast and northwest quarter of section twenty-seven; the southeast quarter of section twenty-one; the northeast quarter of section twenty-eight, and the southeast quarter of section twenty-two; all in first fractional township and sixth range west of the basis line, in the Ocoee district; also the NW. ¼ of sec. 2 & ¼ of the NE. ¼ of sec. 2, both in 2 fr. T. 6 R. west basis line in the Ocoee district, containing one thousand acres; also the undivided half of the northwest quarter of section one (subject to a lease for five years to (Matthew) Walker & Spencer, the benefit of which lease to the extent of my interest from this date is hereby conveyed); the undivided half of the following parcels: Forty acres, being the northwest corner or fourth of the southeast quarter of section ten; the southeast quarter of section eleven; the southeast quarter of section two; the northwest fourth of the northeast quarter of section two; the northwest quarter, and the remainder previously *we* granted, being one hundred & twenty acres of the north-
351 east quarter of section ten; the northwest corner of the southeast quarter of section ten, and the remainder previously *we* granted, being one hundred & twenty acres of the southwest quarter of section nine; the east half of the southeast quarter of section ten; the northeast fractional quarter of section fifteen, being thirty-eight acres, all in the second fractional township and six range west of the basis line in the Ocoee district, containing in said tract one thousand one hundred & eighteen acres, the undivided half of which is intended to be hereby conveyed, being five hundred & fifty-nine acres; to have and to hold the land, and hereby conveyed, with all mines and minerals, unto the said J. Homes Agnew and James C. Haselton, their heirs and assigns forever, the title to which I do, for myself, my heirs, assigns, and legal representatives, warrant unto the said J. Homes Agnew & James C. Haselton, their heirs & assigns, against the lawful claims of all persons whatever; the right of way & of water for the use of the Nashville & Chattanooga Railroad are, however, reserved for said road.

352 Witness my hand & seal January 29, 1859.

E. ALLEY. [SEAL.]

Witness':
G. T. SWIFT,
REESE B. BRABSON.

STATE OF TENNESSEE,
Marian County:

Personally appeared before me, W. Byrne, clerk of the county court of said county, E. Alley, with whom I am personally acquainted, who acknowledged that he executed the within deed of conveyance on the day it bears date for purposes therein contained and expressed. Witness my hand at office in Jaspar this 10th day of March, 1859.

W. BYRNE, *Clerk.*

STATE OF TENNESSEE,
Marian County:

I, W. Byrne, register of said county, certify that the foregoing is a true copy of the deed of conveyance of E. Alley to J. Homes Agnew and James C. Haselton, as appears of record in my office, book H, pages 309 & 310. Witness my hand at office in Jaspar this 25th day of April, 1876.

W. BYRNE, *Reg.*

EXHIBIT B.

Deed.—E. Alley to J. Homes Agnew, J. C. Haselton.

353 I, Erasmus Alley, of Marian County, Tennessee, do hereby bargain, sell, & convey to J. Homes Agnew & James C. Haselton, of Yonkers, State of New York, for the consideration of seven thousand five hundred dollars, thirty-five hundred dollars to me in hand paid, the receipt of which I hereby acknowledge—the residue is reserved to me by two several notes, each for two thousand dollars, payable in the city of New York, one at six months & the other at twelve months, both drawing interest from date—the tracts & parts of tracts of land, hereinafter described, lying in the county of Marian, State of Tennessee, to wit: The northeast & northwest quarter of section twenty-one; the northeast quarter of section twenty-eight, and the northwest quarter of section twenty-two; all in the first fractional township and sixth range west of the basis line in the Ocoee district; also the northwest quarter of section two, and one-fourth of the northeast quarter of section two, both in the second fractional township, sixth range west of the basis line in the Ocoee district, containing one thousand acres; also the undivided half of the northwest quarter
354 of section one (subject to a lease for five years to Walker & Spencer, the benefit of which lease, to the extent of my interest, from this date is hereby conveyed); the undivided half of the following parcles: Forty acres, being the northwest corner or fourth of the southeast quarter of section ten, the southeast corner of section (three), the southeast quarter of section two, the northwest fourth of the northeast quarter of section two, the northwest quarter, and the remainder previously ungranted, being 120 acres of the northeast quarter of section ten; the northwest corner of the southeast quarter of section ten, and the remainder previously ungranted, being one hundred & twenty acres of the northwest quarter of section nine; the east half of the southeast quarter of section ten, the northeast fractional quarter of section fifteen, being thirty-eight acres, all in the second fractional township, and sixth range west of the basis line in the Ocoee district, containing in said tracts one thousand one hundred & eighteen acres, the undivided half of which is intended to be hereby conveyed, being five hun-

dred & fifty-nine acres; to have &t o hold the land & premises
355 hereby conveyed with all mines & minerals unto the said J. Homes Agnew & James C. Haselton, their heirs & assigns forever; the title to which I do, for myself, my heirs & assigns and legal representatives, warrant unto the said J. Homes Agnew & James C. Haselton, their heirs and assigns against the lawful claims of all persons whatever; the right of way and of water for the use of the Nashville & Chattanooga Railroad are, however, reserved for said road.

Witness my hand & seal, Jan. 7th, 1859.

E. ALLEY. [SEAL.]

Witnesses:
G. T. SWIFT.
REESE B. BRABSON.

STATE OF TENNESSEE,
Marian County:

Personally appeared before me W. Byrne, clerk of the county court of said county, E. Alley, with whom I am personally acquainted, who acknowledged that he executed the within deed of conveyance on the day it bears date, for the purposes therein contained and expressed. Witness my hand at office in Jaspar this 10th day of March, 1859.

W. BYRNE, *Clerk.*

356 STATE OF TENNESSEE,
Marian County:

I, W. Byrne, register of said county, certify that the foregoing is a true copy of the deed of E. Alley to J. Homes Agnew & James C. Haselton as appears of record book K, pages 258 & 259. Witness my hand at office in Jaspar, this 25th day of April, 1876.

W. BYRNE, *Register.*

Intg. 8. Does any entry appear upon book H connected with said registration showing when said deed was noted for registration, or when it was recorded?

Ans. There is no mark or note showing when said deed was received by the register for registration or when the same was recorded.

Intg. 9. How long did said original deed referred to by the copies above named remain in the register's office after you recorded it?

Ans. My impression is that the deed was taken out immediately after being registered or very soon thereafter.

Intg. 10. When you registered the deed referred to in book K, the second registration, did you make any note on the original deed showing that it had been registered the second time?

357 Ans. I do not recollect that I did.

Intg. 11. Do you have any recollection of ever having seen the original deed from the time you delivered it soon after its first registration up to Oct. 1872, when it was returned for registration?

Ans. My recollection is that I did not.

Cross-ex.

Who brought the deed to you for registration?

Ans. My impression is that it was E. Alley. I was not acquainted with the other parties to the deed. E. Alley acknowledged it before me as clerk of the county court & I think had the registering done at the same time.

Ques. 2. You will look upon the registration of the deed or conveyance from E. Alley dated 26 April, 1870, registered same day in book

I, pages 475 & 476, and copy exactly the manner of registration so as to show the heading.

Ans. The heading of said deed is as follows:

"E. Alley. Agreement. To James A. Whiteside.

"Whereas I, Erasmus Alley of the county of Marian State of Tennessee, have heretofore been the owner of certain lands on Raccoon Mountain." C. C.

358 Ques. 3. Please examing particularly the index of the registration in your office and say whether there is any index of any land or conveyance from E. Alley to Harriet L. Whiteside after the 26th of April, 1870?

Ans. The index shows no such registration as E. Alley to Harriet L. Whiteside since 26th April, 1870.

Ques. 4. State the manner of index in the said conveyance from E. Alley dated 26th April, 1870, and registered in book "I," pages 475 & 476?

Ans. The indexing is as follows: Alley, E., to James A. Whiteside.

Ques. 5. How long did this deed remain in the office before the same was taken from the office?

Ans. I do not know; I was not register at that time, and did not make the registration.

Ques. 6. You state that your impression is that the deed from Alley to Haselton & Agnew registered in March, 1859, did not remain long in the office. Can you state upon what your impression is based? Is it not as a general thing the habit or custom to allow deeds to remain in the office for days?

359 Ans. The register is interested in his deed being taken out of the office. He only retains them until he gets his fee. I was deputy register and made it a cash business as much as possible. And further deponent saith not.

W. BYRNE.

Sworn to and subscribed before me April 25, 1876.

AMOS L. GRIFFITH,
J. P. Marian County, Tennessee.

Agreed that V. A. Gaskill may deliver this deposition to the clerk and master at Chattanooga. Formal caption & certificate waived.

N. H. BURT,
Att'y for Badge & Eaton.

Exhibit H to agreement.

VARNEY A. GASKILL & WIFE, H. L. GASKILL, *vs.* JOHN BADGE, ALBERT C. EATON, E. G. EATON, J. C. HASELTON, A. A. HYDE, Mrs. N. G. EATON, JOHN W. TALLEY, DAVID PILLSBURY.	Original & amended & supplemental bill.

Be it remembered that on this 15th day of December, 1876, these causes came on to be heard upon motion of complainant, Gaskill & wife, by solicitor, for judgments pro confesso, against David Pillsbury, John

Badge, A. C. Eaton, E. G. Eaton, & J. C. Haselton, defendants,
360 to the 1st amended & supplemental bill; and it appearing to the court that process of subpœna regularly issued under said amended & supplemental bill as to said defendants on the 19th July, 1875, requiring the said defendants to appear at the October term, 1875, of this court to make defense to complainants said first amended bill; and it further appearing that service of said process was duly acknowledged by all the said defendants by their atto. & solicitor of record, Nash H. Burt, on the 21st July, 1875; & it further appearing to the chancellor that said defendants have made no defense as yet to said amended bill & have declined to do so: It is therefore decreed by the court that judgment pro confesso be, & is hereby, entered against all said defendants, Badge, E. G. Eaton, A. C. Eaton, J. C. Haselton, & David Pillsbury, and this cause, as to the matters of said 1st amended bill, set for hearing ex parte as to them. E. G. Eaton is excepted in the above judgment pro confesso. And therefore this cause on to be heard upon the original & amended & supplemental bills, exhibits thereto, & an-
361 swers & exhibits thereto, & the proofs & other exhibits in the cause; and from all which it appears to the court & the court so adjudges & decrees, that complainants are entitled to the relief sought by their bills; that the title to the lands embraced by the terms of the lease Exhibit A to complainants' original bill and described in the deed of E. Alley to H. L. Whiteside, dated the 26th of April, 1870 (Ex. A) is & was at that date in compl't H. L. Whiteside & superior to the title of the defendants, & that she was on that day & at the date of the said lease to Badge & Eaton of June 1st, 1870, in the actual possession of said lands & premises, including the coal mines called "Vulcan mines" in the pleadings & proof described, & had thus been in the possession from the latter part of the year 1867, & was then treated as the rightful & legal owner, & as in possession of said leased premises by Badge & Eaton, and E. G. Eaton & J. C. Haselton. And it further appears that the defendants Badge & Eaton and E. G. Eaton continued to hold, work, use, and enjoy the use and benefit of said Vulcan mines and leased premises from June 1st, 1870, according to the terms of
362 said lease up to the time of filing of complainants' bill in this cause, and continued to recognize and treat complainant H. L. Gaskill as the owner of said land & premises, & as their lessor and landlord, and to pay rents to her as such under the terms & obligations of said lease. The court therefore decrees further that, independent of any questions as to superiority of title in fee, the said defendants Badge, A. C. & E. G. Eaton are estopped from disputing the title of the complainant H. L. Gaskill in this action for rents and for possession of said leasehold premises. And it further appearing to the court that the said lease of June 1st, 1870, has expired during the proceedings of this litigation, and that the defendants Badge & Eaton decline & refuse to demand or accept a renewal lease as provided for in said Ex. (A), and it further appearing pending this litigation, the said defendants Badge & Eaton have combined & confederated with defendant J. C. Haselton to injure & defraud complainants, & to carry into effect such object delivered over into custody and possession of J. C. Haselton the said leasehold premises, who now, in violation of
363 the rights of complainant, is holding & claiming possession of the same illegally & wrongfully: The chancellor, therefore, upon this branch of the case, and in view of the whole case, declares that the said complainants recover from the defendants the possession of all said leasehold premises, including said Vulcan mines and the property

thereon mentioned in said "Ex. A," to be returned to complainant H. L. Whiteside at the termination of said lease, to wit, all the buildings, houses, tramways, tracks, entries, and approaches to said mines & upon said lands, the same having, with the mines & leasehold premises, been agreed & covenanted by defendants Badge & Eaton to be delivered up in good condition to complainant H. L. Whiteside at the expiration of said lease, and a writ of possession will issue, upon demand of complainants, by the clerk and master of this court, to put complainants in the peaceable & quiet, undisturbed possession of the same, & as to all said property the injunction in this cause is made absolute.

And it further appearing that the defendants, John Badge, A.
364 C. Eaton, & E. G. Eaton are largely in arrears in payment of the rents to complainant according to the terms of said lease, but the precise amount not appearing to the court, the chancellor, therefore, upon this branch of the cause refers the said matters to the clerk & master of this court to enquire & report upon the pleadings & proofs in the cause, & upon such other proofs as the parties may adduce:

1st. According to the terms of said lease of June 1st, 1870, how much rental was to be paid per month, regardless of amount of coal mined, by the defendants, Badge & Eaton, to complainants, from the beginning of the payment of rents to the end of said lease, according to its own limitations as to time?

2nd. How much of said rents said defndants have paid, and when & how?

3rd. How much, if any, of said rents remain due & unpaid, & for what months? In making said enquiries & calculations above directed the master will charge defendants Badge & Eaton with one hundred dollars per month from 1st day of June, 1870, to 1st day of June, 1875, and credit them with such payments as they may
365 have made during said time upon said indebtedness according to the stipulations in said lease touching the same.

4th. Whether any maximum rents are due under the terms of said lease; if so, for what months & how each month, and how much in the ag'regate?

5th. How much of said maximum rents, if any, has been paid by said Badge & Eaton, & the times of such payment?

6th. The balance of such maximum rents, if any, due to complainants according to said lease, "Ex. (A)."

Touching the deed of trust executed by John Badge & A. C. Eaton, E. G. Eaton, on the 7th of November, 1874, to David Pillsbury, purporting to convey certain property therein mentioned and described, to said Pillsbury, as trustee, to secure certain debts or liabilities assumed therein to be due or owing to defendant J. C. Haselton & others mentioned, is & was fraudulent and void as to the complainants, Gaskill & wife, the same having been made to hinder, delay, & defraud complainants in the collection of their said debts. The said deed of trust to said Pillsbury, of the 7th Nov., 1874, is therefore declared
366 fraudulent & void as to complainants, & the same is, as to them, set aside and for nothing held; and the same property, therein specified and described, so far as attached and enjoined in this, and all other property attached & enjoined in this cause, is declared liable to the payment of complainants' decree, and the same will be surrendered up to the clerk & master of this court to be sold, excepting such articles as have been decreed as being attached to the realty, and by the terms of the lease goes back to the complainants, under the terms of the lease, for the satisfaction of complainants' said decree, to wit,

thirty-nine hundred bushels of coal, 1,000 pounds of iron, one lot of blacksmith's tools, one lot of carpenter's tools, one lot of shovels, one lot of wire rope, two wire ropes, two drums, one jack-screw, 500 feet of 1½-inch pipe, 300 feet of inch pipe, 3 bedsteads, 2 single bedsteads, four mattresses, one hundred and twenty-five blankets, 2 tables, 2 cooking-stoves and fixtures, 2 heating-stoves, one bake-oven, one wash-boiler, and various other articles of property, mentioned and described in the return of R. Pryor, sheriff of Marian County, Tennessee, and the schedule to said return as part of it, on the attachment issued under the original
367 bill in this cause by J. T. Hill, deputy clerk & master of this court, on the 5th day of December, 1874, and levied 11th Dec., 1874, & levy endorsed and signed by the said sheriff as of date 12th Dec., 1874, to all which reference is made for greater security, upon the demand of the clerk & master, the same having been attached as aforesaid, & left in the custody of defendants, with the lien of attachment thereon, and the same enjoined in the hands of the defendants Badge & Eaton & J. C. Haselton; and in default of such delivery being made, in whole or in part, the defendants are decreed liable for the same, or the value thereof, to the extent of the amount of complainant's recovery in this cause for debt, interest, & costs. Said property, when delivered as above described to the master, will be by him advertised, for ten days or more, in some newspaper published in Hamilton & Marian counties, giving notice of time, terms, & place of sale, and sell said property at public outcry to the highest bidder upon the premises, on a credit of six months, requiring of the purchaser notes, with approved personal security, and bearing interest from date; and the master
368 will hold the proceeds of sale subject to the further order of this court, said property being of such character as to deterioration, depreciation, & loss, on account of its perishable character; and upon this branch of the cause the C. & M. will enquire and report to the next term of this court how much of said property so attached as aforesaid and ordered delivered to the master may be so delivered, and the articles not so delivered, and what became of them, if in any of the defendants' possession, whose possession, and value of such articles, and if sold or converted by any of the defendants, or by their order or permission, what articles, and by which defendants or defendant, & when, and the value of such converted articles. This enquiry is directed to the end the court may render the proper decree for money value of such retained or converted articles, and against such defendant or defendants as may be properly liable therefor in the first instance. It is further decreed by the chancellor, touching the deed of trust executed by E. G. Eaton to V. A. Gaskill, for benefit of H. L. Gaskill, to secure her in the payment of two notes
369 thereon mentioned, which deed was dated 25th October, 1872, that said complainants recover of the said E. G. Eaton the sum of twelve hundred & fifty-three dollars and thirty-three cents, the same being the amount, principal and interest, of said two notes mentioned in said deed to this date; and the said deed of trust having long since expired by its own limitation, and said notes long since past-due, the chancellor therefore decrees that the said E. G. Eaton do pay into the office of the clerk & master of this court the aforesaid sum of 1,243.33 cents for the benefit of complainants within sixty days from this date, and in default thereof the clerk & master will advertise the said real estate in said deed mentioned, to wit, a certain parcel of land situated in what is known as Vaughn's addition to the city of Chattanooga, Hamilton County, Tennessee, commencing 420 feet south of the south-

west corner of Vulcan & Whiteside streets, running thence with Whiteside street 83 feet, thence southwardly one-half way to Sidney street, thence at right angles, parallel (north) with Whiteside street 83 feet; thence at right angles to the beginning corner, thirty days or
370 more in some public newspaper published in Hamilton County, Tennessee, giving notice of time, terms, and place of sale, and in pursuance thereof expose said real estate to sale at public outcry, to the highest bidder for cash, and hold the proceeds of sale subject to the further order of court. And it further appearing to the court that respondent E. G. Eaton sold out his interest in the firm of Badge & Eaton, as lessees of said Vulcan mines & property real & personal connected therewith, and that said John Badge & A. C. Eaton bound themselves to pay all debts against the said old firm of Badge & Eaton, composed of John Badge, A. C. Eaton, & E. G. Eaton, and they were to have the said properties and all interest therein:

It is therefore, by consent of all parties, further decreed that the said Badge & A. C. Eaton will be first liable to the payment of all such decrees as may be finally obtained in this cause against John Badge, A. C. Eaton, & E. G. Eaton, and if the said recovery for debt, interest, & costs, cannot be all made out of them, and out of said defend-
371 ant J. C. Haselton, so far as he may be deemed liable in this cause, then the said E. G. Eaton will be proceeded against by execution or otherwise for such balance.

It is further decreed that respondents John Badge, A. C. Eaton, & E. G. Eaton, pay all the costs of this cause.

The complainants dismiss their bill as to the Shell Mound mill property & the defendants Hyde & Mrs. N. J. Eaton, and the defendant E. G. Eaton confess' judgment for the costs incident to that branch of the cause, for which execution may issue.

Exhibit "I" to agreement.

STATE OF TENNESSEE:

Chancery court of Hamiltan County.

V. A. GASKILL & WIFE
vs.
BADGE & EATON & OTHERS.

To the sheriff of Marian County, greeting:

Whereas said court, by decree rendered in the above stated court, at last Dec. term, directed a writ of possession to issue to place complainants, on their demand, in the quiet, peaceable, & undisturbed possession of their interest, being an undivided one-half (½) of the lands embraced by the terms of the lease filed as Exhibit A to comp'ts bill in
372 this cause & described in the deed of E. Alley to H. L. Whiteside, dated 26th April, 1870, and being the same property upon which the "Vulcan mines" are located in Marian County, Tennessee, including said Vulcan mines & all the buildings, houses, tramways, tracks, entries, & approaches to said mines upon said land situated & mentioned & included in the lease from H. L. Whiteside to Badge & Eaton, a copy of which is filed as exhibit to complainants' bill, & hereby referred to as part of this writ; and, whereas said complainants being awarded said writ of possession, this is therefore to command you to go upon said premises above described & eject & evict there-

from any & all persons holding or in possession of the ½ undivided interest of complainants in same adversely to the claim of said complainants, & place said compl'ts in the quiet, peaceable, & undisturbed possession of the same said undivided one-half, and you will make due return of how you have executed this writ.

Witness T. M. McConnell, C. & M. of said court, at office in Chattanooga, Tenn., 2nd Monday in October, 1876.

T. M. McCONNELL, *C. & M.*,
By J. T. HILL, *D. C. & M.*

373 Came to hand this 30th day of January, 1877. Executed same day by taking V. A. Gaskill, as agent of V. A. Gaskill & wife, H. L. Gaskill, upon the leasehold, premises described in this writ, and after reading this writ to Mr. A. C. Eaton, agent in possession, & being in charge & possession & having the management of the leasehold premises described in this writ, & of the mines & property referred to in this writ, including said Vulcan mines & all the buildings, houses, tramways, tracks, entries, & approaches to said mines upon said land situated & mentioned & included in the lease from H. L. Whiteside to Badge & Eaton, a copy of which is filed as an exhibit to complainants' bill, & hereby referred to for a description fully of the property to be put in possession of said V. A. Gaskill & wife, H. L. Gaskill, being their interest, namely one undivided one-half interest in all the property above referred to, & after reading this writ to said Eaton, I placed said Gaskill, as agent of V. A. Gaskill & wife, H. L. Gaskill, in the quiet, peaceable & undisturbed possession of the same said undivided one-half as above described & referred to. All done on the 30th day of Jan., 1877.

THO'S P. HALL,
Sheriff Marian County, Tenn.

374 *Exhibit J to agreement.*

In chancery in Hamilton Co., Chattanooga, Tenn.

GASKILL & WIFE
vs.
BADGE & EATON.

Deposition of J. P. McMillen, taken by consent, to be read as evidence in the above-stated cause in behalf of compl't.

Quest. 1. State for what period of time you acted as agent for Mrs. Whiteside, now Mrs. Gaskill, in managing the affairs of the Vulcan mines, Marian Co., Tenn.

Ans. I acted as such agent, but do not remember the period of time.

Quest. 2. Did you or not take possession of Mrs. Gaskill's interest in Vulcan mines by order of the sheriff of Marian under a writ of possession from the supreme court of Tenn.?

Ans. I did; by the sheriff's deputy.

Quest. 3. Who was working the Vulcan mines while you acted as agent as aforesaid?

Ans. Badge & Eaton, a company composed of John Badge & E. G. Eaton.

Quest. 4. Did you ever, by threats, or in any other manner, threaten to have Badge & Eaton evicted from the Vulcan mines unless they gave you a written lease, or did you ever insist upon a written

375 lease from them at any time while you were acting as the agent of Mrs. Gaskill for the Vulcan mines?

Ans. I do not remember now that I ever made any threats; we frequently spoke of making a written lease or arrangement for permanent workings & payments.

Quest. 5. When did you cease acting as agent for Mrs. Gaskill in managing the Vulcan mines?

Ans. I do not remember the date; probably in 1869.

Quest. 6. Did you have anything to do with procuring the lease of Vulcan mines made between John Badge & A. C. Eaton & Mrs. Gaskill, then Mrs. Whiteside, dated June 1, 1870?

Ans. I did not.

Quest. 7. While you acted as agent what was the agreement that Badge & Eaton should pay per bushel for the coal mined at Vulcan mines?

Ans. The agreement was made with Mr. Haselton. I think the price to be paid under that agreement was two cents p'r bushel.

Cross-ex.:

Quest. 1. Were Badge & Eaton in possession of the Vulcan mines when you had the writ of possession in favor of Mrs. Whiteside served upon them?

Ans. They were.

Quest. 2. Who had put them in possession of the Vulcan mines before the writ was served?

376 Ans. Mr. J. C. Haselton.

Quest. 3. Did you know at the time the writ of possession was served that the SE. ¼ of sec. 3 was not included in the writ of possession?

Ans. I did not know at the time what sections or quarter sections was included, unless they were shown in the order of the court. I did understand or suppose that the Vulcan mines were included.

Re-ex. by sol. for Gaskill & wife:

Quest. 1. What did Mr. Haselton say when he put Badge & Eaton in possession of the Vulcan mines before the writ was served?

Ans. Mr. Haselton told me some time after Badge & Eaton commenced work that he had given them permission under the impression probably that the property was included in his lease. I do not remember whether this was before or after I took possession of Mrs. Gaskill's separate interest. I refer to the Etna lease when I speak of his lease.

Quest. 2. Who owned the property covered by the Etna lease?

Ans. It belonged to Ker Boyce's heirs, J. P. Boyce, J. A. Whiteside's heirs, & R. Cravens.

J. P. McMILLEN.

377 I agree that the foregoing deposition may be used as if sworn to, &c., subject to legal exceptions for relevancy & pertenancy, and to that part of the deposition in speaking of the contents of the writ of possession, a copy being the best evidence.

NASH H. BURT,
Att'y for Badge & Eaton.

(Endorsed:) No. 1587. V. A. Gaskill & wife vs. Badge & Eaton. Deposition of J. P. McMillen. Filed 10th April, 1876. J. A. Caldwell, C. & M. "J."

Exhibit No. 1 to agreement.

In chancery. Chattanooga, Hamilton Co., Tenn.

V. A. GASKILL & WIFE ET AL.
vs.
BADGE & EATON ET AL.

Deposition of E. Alley, taken by consent, to be read as evidence in the above stated case. Deposition taken in behalf of complainants, Gaskill & wife.

By complainants' sol'r:

Intg. 1. You will please examine the copy of your answer in the case of Haselton and Giles vs. E. Alley et al., filed April 14th, 1873, in Marian County, Tenn., by G. S. Deakins, C. & M. of the chancery court, marked Exhibit A, & state whether said copy is a true copy of said answer, & whether said copy states the facts as you then remem-
378 bered them & as you now remember them, & make said copy, as marked Exhibit A, a part of the answer to this deposition, as stating the facts as occurred between you and the parties interested in the above stated case.

Ans. I hereby file Exhibit A as a true copy of my answer in the above stated case, and here state that all the facts stated in said Exhibit A, as far as applicable to the above stated case, are true, & that all the statements in said Exhibit A are true.

(Exceptions filed before signing.)

Cross-ex.:

Quest. 1. When the sale was made of the land purchased by Mrs. Whiteside (now Mrs. Gaskill), where was J. C. Haselton? Where was the sale made? Who cried the sale? Who did the bidding?

Ans. I don't know where he was; he was not at the sale. It was made at Whiteside depot. Mr. Patterson, the clerk of the supreme court. Mrs. Whiteside, now Mrs. Gaskill, first bid $5,000. Witness insisted on a higher bid in order to cover as much as possible of what witness owed the Whiteside estate. I then told her if she did
379 not raise the bid I would, & she raised the bid to $5,500 & the lands were struck off to her, which left a balance of several hundred dollars due me by Haselton & Agnew.

Quest. 2. How far was Whiteside depot from the lands sold?

Ans. The most of the land was in sight of Whiteside's depot.

EXHIBIT A.

The separate answer of Erasmus Alley to the bill filed against him & others in the chancery court at Jaspar, Tennessee, by J. C. Haselton and W. O. Giles:

Respondent, saving and reserving the benefit of all proper exceptions to complainants' bill, for answer to so much of the same as he is advised is material for him to answer, says that he has examined the answer of V. A. Gaskill & wife, H. L. Gaskill, filed in this cause or rather prepared and intended to be filed, and he hereby expressly adopts the same for his answer to said bill, as far as applicable, and without undertaking to answer said bill in detail.

Respondent refers to and adopts their answer as fully as though he

had made the answer himself, except that part and those portions thereof which are made upon the exclusive personal knowledge
380 of his co-respondents V. A. and H. L. Gaskill. Respondent says that it was his intention and purpose to reconvey to said Haselton & J. Holmes Agnew the NW. ¼ of sec. 10 and the SE. ¼ of sec. 3, and not the SW. ¼ of sec. 10 & SE. ¼ of sec. 11. Respondent never had or claimed title to the last described land, but did have title & did sell the first described land to said Haselton and Agnew. The property was pointed out to them at and before the date of the purchase by them, and when the conveyance was made respondent exhibited to the att'ys of said Haselton & Giles who wrote the deed, the entries, grants, deeds, & all the evidences of the title which he had to said lands. When the conveyance was made all these evidences of title were delivered to said Haselton in the presence of James A. Whiteside, & respondent has not seen them since that time. Respondent cannot say whether there was error in the original deed or whether it is the error of the register in copying it. Respondent knew nothing of the mistake, if one was made, until some time after the sale of the lands by the clerk of the supreme court.

381 Respondent obtained the description of the property, as set out in the bill to enforce his vendor's lien, from the registered copy which he then supposed was correct, and the whole proceeds were carried on sale made thereunder before he knew there was any error in the description. Respondent certainly intended to convey the said NW. ¼ of sec. 10 & SE. qr. of sec. 3, and said Haselton and Agnew purchased them. It was also the intention to enforce the vendor's lien upon these lands, and the same were sold by the clerk of the supreme court, and he announced that he was selling all the lands conveyed by respondents to said Haselton & Giles.

Respondent executed the conveyance marked Exhibit A to the answer of V. A. and H. L. Gaskill on the day it bears date, and its purpose is expressed upon its face. No fraud was intended or perpetrated upon complainants or either of them. Respondent had no design or desire in making said conveyance to Mrs. Gaskill, then Mrs. Whiteside, to do complainant any wrong. He then believed and yet does that all of the lands described in said conveyance was and had been sold under the proceeding by which he had enforced his lien as vendor, and the
382 object of said deed was to simply *to* do justice to Mrs. Gaskill as the purchaser. She having paid or given credit to respondent for the amount of her bid, respondent insists that said Mrs. Gaskill purchased at said sale all the land described in said conveyance. Respondent denies each and every allegation of fraud with which he is charged. He denies all collusion with his co-respondents, or either of them, to defraud complainants or either of them. He denies that complainants or either of them have any legal title to or equitable interest in said land, and denies their right to reform or correct the said deed, as they are seeking to do. Respondent again refers to and adopts the answer of said V. A. & H. L. Gaskill as his answer to each and every allegation in said bill not answered in this answer. And respondent having answered prays that complainants' bill be dismissed & he discharged with his costs.

S. A. KEY, *Sol.*

STATE OF TENNESSEE,
Marian County:

Before me, the undersigned, personally appeared E. Alley and made

oath in due form of law that the statements made in the foregoing answer are true, according to the best of his knowledge, information, & belief.

(Signed) E. ALLEY.

Sworn to & subscribed before me this 14th day of April, 1873.

G. S. DEOKINS, *Com.*

Quest. 3. How far is the Vulcan mines from Whiteside depot?

Ans. About 1½ miles.

Quest. 4. What was the consideration Mrs. H. L. Whiteside paid you for the deed or the lands in said deed mentioned & made by you on the 26th day of April, 1870?

Ans. Said deed was made to enable her to sell the lands described to a company in Huntsville, who were negotiating for them. The names of the company I have forgotten. No consideration passed except that Mrs. Whiteside agreed to give me the privilege of building at a mineral spring on her land, & using said spring, with the privilege of such timber as I might need, which was my contract with Haselton when I sold to him.

Quest. 4. On what lands were the said mineral springs? How far from the Vulcan mines? In what direction?

Ans. Don't recollect No. of lot. It is a NE. direction, about 2 miles from Vulcan, on the top of the mountain.

Quest. 5. Was not a man named Williams one of the Huntsville company wanting to buy the lands? and was it not the purpose of said parties to buy the Vulcan mines?

Ans. Don't recollect the names. The object of the parties was to buy the mines. I worked myself the Alley mines at the head of the cove back of the Vulcan mines.

Quest. 6. Do you know on what section or ¼ section the Vulcan mines are upon?

Ans. No, sir; I do not. I do not recollect the number or quarter section the Vulcan mines are upon. Been so long since I examined the mines I have forgotten; I had maps of all my lands, but they were lost by the war.

Quest 7. When the supreme court clerk announced the sale of the land at Whiteside, did he not do so by reading from the advertisement in the case?

Ans. The clerk did not read out the advertisement but showed the the advertisement and said he would sell all the land sold by Alley to Haselton & Agnew?

Quest. 8. Did he mention the sections or quarter sections?

Ans. Don't recollect that he did; hardly think he did name them all.

Quest. 9. How many were present, and how many bidders were there for the land?

Ans. There were some 20 or 30 persons present, a good big crowd; don't recollect whether there was more than one or two bidders. If there was any than Mrs. Whiteside and myself I don't recollect.

Quest. 10. Was the Vulcan mines or any coal mines mentioned by the clerk in crying the sale?

Ans. I do not recollect that there was; don't think there was anything said about coal lands. It was generally understood that it was coal or mineral lands that were sold.

Quest. 11. Is it not generally understood that all the lands around and about Whiteside are coal or mineral lands?

Ans. I do not think it is, only certain portions; some spurs of the mountain have coal, but not worth working. The principal coal is on top of the mountain—the top stratas.

Quest. 12. Are you certain any of those lands are in sight of Whiteside?

Ans. I am, but can't recollect what tracts; but the tract that the Spencer & Walker mines are upon are in sight, which are
386 north of Whiteside depot.

Re-examination:

Int'g. 1. Were not the lands in contemplation sold by the supreme court clerk as valuable coal lands?

Ans. Yes; that was what was stated.

Int'g. 2. How many coal banks had been opened on the lands sold by the supreme court clerk at the time of the sale above named?

Ans. There were four or five banks opened on the lands contemplated when I sold to Haselton & Agnew—some on the Alley mines & some on the Spencer & Walker mines, & also when the sale was made by the supreme court clerk, & the Alley mines was the main consideration moving Haselton & Agnew in buying the lands at first. I think a portion of the Alley mines were on sec. 10, from a mile & a quarter to a mile & a half from the railroad.

Int'g. 3. Are not the Alley & the Vulcan mines of the same vein of coal?

Ans. I think they are, for they are upon joining quarter sections & of nearly the altitude; & further deponent saith not.

E. ALLEY.

Int'g. 4. Upon what qr. section of land is the railroad spring which you reserved in your sale to Haselton & Agnew, & which is now
387 being used by the N. C. & St. Louis Railroad?

Ans. On the southeast quarter of section 3. I had it surveyed some three times by good surveyors, & am sure I am right.

Int'g. 5. Were not Badge & Eaton parties to the suit in which you filed your answer which you have made Exhibit A to this deposition?

Ans. They were.

E. ALLEY.

Badge & Eaton except to the exhibit the answer of E. Alley, filed *filed* by compl'ts, because the same is *as* only a part of an unknown record in this cause, or any other cause, so far as said answer appears, and because it is not shown, nor does it appear in any manner that said answer is a proceeding between the same parties & subject-matter as to operate as any estoppel, &c., &c., and because of the irrelevancy of said answer as evidence in this cause, and all & any other objection allowable to said evidence. Formal certificate or any other formality to this deposition is waived, and to have the same effect as if duly sworn to, no officer being present.

Ap'l 14th, 1876.

BADGE & EATON,
By N. C. BURT, *Solicitor.*

388 *Exhibit No. 2 to agreement.*

To Hon. D. M. Key, chancellor for the 3rd divis. of Tennessee, and presiding in the chancery court of Hamilton County, at Chattanooga, in said State.

V. A. GASKILL & WIFE, H. L. GASKILL, citizens of Hamilton County, Tenn.,
vs.
JOHN BADGE, ALBERT C. EATON, & E. G. EATON, & of Hamilton County, Tenn.; J. C. Haselton, & a non-resident, & said to be a citizen of ; A. A. Hyde, of Marian County, Tenn.,; Mrs. N. G. Eaton. Hamilton County, Tenn.; John B. Talley, Jackson County, Ala., a non-resident.

Your complainants humbly represent & show to your honor, that heretofore, to wit, upon the 1st day of June, 1870, the said complainant, H. L. Gaskill, whose names was then H. L. Whiteside, she having since intermarried with her co-complainant, V. A. Gaskill, was the owner, proprietor, and possessed an interest in the following lands and real estate, to wit: the section of land then occupied by the three above-named defendants, A. C. & E. G. Eaton & John Badge,
389 and upon which the coal mines then known as the Vulcan mines were and are situate in Marian County, Tennessee, and being such owner of interests therein, the said dfendants last named desired to lease the same from complainant H. L. Gaskill for five years, with privilege of another five years upon same terms. They professed to understand the business of mining coal, and to know the land and mines well; but complainants' knowledge of the business of mining for coal, & the character & value of the land & mines was quite limited, and she relied much upon their statements & fairness in the transaction, in negotiating a lease with them. However, complainant desiring her interest in said land to be productive to her, finally entered into a written lease with said defendants, Badge & the Eatons, who were partners in the business & transaction, as she learned from them. A true copy of which, with probate & registration thereof is hereto annexed, marked Ex. A, to which the court is referred as part of this bill, but it need not be copied.

Under this lease, the said defendants, as tenants under complainant H. L., as their landlord, took the possession and control of all the mines, interest, &c., in and upon said lands to the fullest extent to which they had or could claim any right under said lease, and from
390 thence, or until the committing of the wrongs & breaches of good faith & trust hereinafter complained of, have had and held possession of said interest in said lands & mines, &c., as such tenants, and have worked and operated the coal mines and derived therefrom very large amounts of coal and gains & profits. It will be observed that by terms of said lease the said defendants are bound to pay all taxes that were or should be assessed upon or against said lands during the term of said lease, and to pay to the said H. L. Whiteside (now Gaskill) twenty-five cents per ton for every ton of coal mined in & upon said lands, during the lease, and that they would pay 25 cents per ton for six hundred tons of coal for each and every month during the lease, the payments to be made on or before the 15th day of each

month for the month preceding; and if they mined over 600 tons per month, they were to pay for such excess 25 cents per ton, and the said payments to be given & made as follows: On 15th day of August, 1870, and continued on 15th days of August, November, February, and May of each & every year, and it will be further seen that the parties expressly fix upon the minimum rent per month, to wit:
391 One hundred dollars per month, which shall be paid monthly, leaving to be paid with or at maximum rents.

It will be further seen that a failure to pay the monthly or quarterly payments shall, at option of complainant, be a forfeiture of the lease, and that in the event of such forfeiture, and the same enforced, the buildings, tramways, entries, & houses upon said land are to be treated and become the property of complainant H. L.

Said lease contract also further provides that the defendants, Badge & Eaton, are to render a statement at the end of each month, showing the amount of coal mined during that month, and that such statement should be sent by mail or delivered to compl't, H. L., and it will be seen that respondents aforesaid further bound themselves to deliver the possession of the premises leased, at the expiration of the lease, with all the buildings, houses, tramways, tracks, entries and approaches to said mines upon said land, the entries & approaches to said mines to be in good condition. The various other covenants in said lease will appear from the same, but are not deemed necessary to be here specially referred to.

392 Complainants have been careful at all times to fully in all things live up to all the covenants in said lease on their part, and have fully complied with them. But respondents have in many important respects, to the great injury of complainants, failed to comply with their duties, & to perform and discharge their obligations. As before stated, they have worked and operated said mines, but they have not reported and paid the rentals as per contract. They, however, made some partial statements and have paid some rents, but they are largely in arrears in the payment of even the minimum rental—that is, one hundred dollars per month. For these minimum rents they paid in cash & settled by note up to 11th day of October, 1873, when they ceased to pay even the minimum rental in full, and to recover the monthly minimum rental not otherwise paid or settled for by them, complainants sued the said defendants before A. A. Pearson, a justice of the peace for Hamilton County, Tennessee, and recovered judgments against them as follows: One for two hundred & nine dollars and sixteen cents,
393 besides costs; one for one hundred & sixty-two dollars and four cents, besides costs; one for two hundred & seven dollars and eighteen cents, besides costs; one for two hundred and three dollars and eighteen cents, besides costs, and one for two hundred and five dollars and eighteen cents, besides costs.

All these judgments were rendered on 7th Nov'r, 1874, and upon the 14th day of Nov'r, 1874, complainants recovered another judgment against the defendant, A. C. Eaton, for the minimum rental for the months ending, respectively, 15th September & 15th October, 1874, amounting in all to the sum of two hundred and one dollars and fifty cents, besides costs of suit; all of the aforesaid judgments are open, unpaid, and no stay thereof, and executions have issued respectively thereon and have been returned nulla bona. All the remainder of said minimum rentals remains unpaid, with interest thereon, as well as a large amount of excess or maximum rental, the precise amount of which complainants are unable to show & charge on account of failure of said

defendants to report the same and refusal to exhibit their books showing the same.

Complainants charge, however, from the best lights and in-
394 formation they can obtain from respondents and otherwise, that the maximum rents in arrear stand as follows:

For the year ending 15th Aug., 1871—

Principal	$177.75
Int. thereon to day of Nov., 1874	30 21
Due for 1872, Aug. 15th, principal	158 00
Int. to Nov'r 1st, 1874	17 38
Due for 1873, Aug. 15th, 1873	972 75
Interest to Nov'r 1, 1874	48 63
Total	$1,404 72

The above may not be exactly correct, but is not too large.

These several sums of money as shown are justly due from respondents to complainants, and respondents absolutely refuse to pay the same or any part thereof, and to evade the same have fraudulently combined & confederated with respondent Haselton, and in such fraud & for such fraudulent purpose have conveyed all the property they have to him; all of which will more fully be shown in this bill.

Complainants expressly charge that in all settlements and payments made & receipts given therefor, the same only embraced said minimum rents; the maximum rents due were and are still unpaid and are
395 justly due. They charge, also, that in said suits brought before said Justice Pearson the complainants only might receive judgment for the minimum monthly rental due, amounting to the terms of said lease, so that the full and entire amount of excess or maximum rental *to* open for inquiry and proof and recovery by compl'ts from resp'ts.

Resp'ts further show and charge that on 25th day of Nov., 1872, the said def'ts were indebted to complainants in amount of minimum rents due under said lease the sum of one thousand dollars, for which two notes were executed, one note for $500.00, due 1st day of April, 1873, and the other for $500.00, and due 1st day of July, 1873, and to secure the payment of which, with all interest & costs, the said E. G. Eaton, one of the partners and lessees, and resp't to this bill, executed to def't V. A. Gaskill, as trustee, a deed of trust for the benefit of compl't H. L. Gaskill, to whom said notes were payable, by which he conveyed to said V. A. Gaskill the following real estate, viz: A certain lot or parcel of ground, or parcel of land, situated in what *as* known
396 as Vaughn addition to the city of Chattanooga, Hamilton County, Tenn., commencing 432 feet south of the southwest corner of Vulcan & Whiteside streets, and running thence with Whiteside street 83 feet, thence southwardly one-half way to Sidney s't, thence at right angles parallel, north with Sidney street 83 feet, & thence at right angles to the beginning corner. A true copy of which is hereto *amended*, marked Ex. B, *or* part of this bill, but need not be copied. Said deed was duly probated, and registered on the 25th Nov., 1872. They further charge that said two notes with interest thereon are wholly unpaid, and are just' due and owing to compl'ts, and shall be filed on or before the hearing of this bill, or when required by your honor. Said trust deed has never been executed.

Your compl'ts further show & charge that the said resp'ts Badge & Eaton, as the lessees and partners as aforesaid, have ceased to operate

the said mines upon the said leased premises, and they are informed & believe, and have declared they never would pay to compl'ts the
397 minimum rents, yet unpaid, nor the maximum rents, and that will not exhibit their books, nor make a statement showing the said maximum am't of coal mined or amount due on that account, and have further declared that they do not intend to reserve the said lease, and that they do not intend and will not pay the said minimum monthly rent or any part thereof yet to come and fall due up to the 1st June, 1875, the termination of said lease, and to practically execute such intention they combined & confederated in fraud with resp't Haselton & pon the day of 1874, fraudulently conveyed to said Haselton the following property, according to the best information they can obtain of the same, viz: 40 coal cars, a lot of wire ropes, one lot of iron, a lot of mules & oxen, one set of blacksmith tools, one store-house, fixtures in store, including one iron safe, a lot of coal & coke on hand, at date of said deed of trust. All of which compl'ts understand to be yet in hands & possession of said Badge & Eaton, unless the coal and coke have been sold & shipped, and have carried said fraudulent
398 transfer & conveyance to be registered in the register's office of Marian County, Tenn.

Compl'ts further charge that said Badge & Eaton have recently, as they are informed & believe, entered into a fraudulent contract with def't Haselton, to further defraud them out of the means of collection of their said debts, and in pursuance thereof have commenced mining on lands which said Haselton claims to have leased on what is known as the Raccoon Mountain property, covered by what is called the Ætna mines lease, and adjoining said Vulcan property above described, and the said def'ts under that arrangement are fraudulently operating to mine the coal from said tract of land, and to appearances a mine, and the same is all covered up in the name of said Haselton, as they are informed & believe, but the precise amount mined from each they do not know and cannot charge.

They further charge that most of the houses & buildings erected for and used in the operating of said mines are near to the line of the
399 lands known as the Vulcan mines property & the Raccoon Mountain property; they were intended to be used on the Vulcan property and so understood by all the def'ts, and def't Haselton stood by & saw them erected, & made no objection, & has all along treated them as being on or belonging to the Vulcan property; but recently as a link in the fraud of def'ts they claim that said buildings are on the Raccoon property, and that compl'ts, as owners of the Vulcan property, have no interest in them. Compl'ts insists & charge that all the def'ts are estopped from saying that said buildings & improvements are not on the Vulcan works. As another instance or circumstance showing fraud & confederation on part of all said def'ts in the transfer of said property to Haselton, compl'ts charge upon information & belief that on the day the said justice's judgments were rendered against the said Badge & Eaton before referred to, said E. G. Eaton pretended to sell & transfer all his interest in said lease, mines, & properties, &
400 partnership to *the* A. C. Eaton and John Badge, & thereupon said A. C. Eaton & John Badge covered up by a pretended and colorable deed of trust or mortgage only, all the property they had of every character liable in law for their debts, and as compl'ts are informed and believe with an expectation to hinder, delay, & defeat compl'ts in the collection of their said rents, and in this said Haselton participated & had full knowledge, and the said E. G. Eaton in like manner

transferred all the property he had subject to execution to his mother, Mrs. Eaton, and some other party. The deed perhaps was made to A. A. Hyde as trustee.

The premises considered complainants pray that all the parties named as such in the caption of this bill be made defendants hereto and answer the several charges herein contained fully; and to that end they pray all necessary & proper process of subpœna & copy of bill issue as to resident defendants & publication be made as to non-residents.

They pray that an attachment issue and the same levied upon all
401 the said property above in this bill described as having belonged to defendants, Badge & Eaton, and now transferred as aforesaid to Haselton, and also attaching all other the estate & properties of said Badge & Eaton, and that of any or either of them wherever to be found, and the same held subject to the further order of this court & subjected under proper decrees to all such decrees as compl't may obtain in this cause; and that injunction issue enjoining all and each of said defendants from selling, transferring, or in any way encumbering any of said property, or any houses, buildings, tramways, tracks, fixtures, appliances, appurtenances, or anything connected with or of said *said* Vulcan mines, and from removing any of the same until further order, and also from using & converting said machinery, properties, tools, appliances, &c., &c., to any other or different works or mining other than the proper mining of coal on said Vulcan property as prescribed & provided in said lease Exhibit "A."

And upon the final hearing of this cause, compl'ts pray an
402 account taken between the parties, and the time, amount, principal & interest due & owing by resp't to complainants according to the terms, spirit, & meaning of said lease contract, and a decree rendered in their favor therefor with full costs; this inquiry, report, & decree to embrace & include all sums yet to fall due until the end of said lease according to its terms; and that at the expiration of the terms of the present lease, the said contract ended, and the properties all decreed and restored to the possession of complainants according to the terms of said lease.

Complainants further charge that the said Badge & Eaton & Haselton are now hauling over and using the said leased premises in operating coal mines upon the Raccoon Mountain property, the injury to compl'ts is considerable & value such as they should be held to account to compl't for, on taking an account in this cause. They further charge that said Eatons have been in default as to monthly & quarterly reports & payment of rents for coal mined under said lease,
403 and they therefore pray that said defendants be required to file with their answers all their books, showing the full amount of coal mined under said lease from the date thereof to the filing of said answer, showing specifically the number of bushels mined each month.

They further charge that the said property so conveyed by E. G. Eaton to said A. A. Hyde as trustee in the steam saw-mill & property and all fixtures & appurtenances & machinery connected therewith on the Tennessee River in Marian County, Tennessee, and situate a short distance above a noted place called Shell Mound, on the line of the Nashville & Chattanooga Railroad. Said mill, &c., was opened by E. G. Eaton & Co., and was partnership property between them, that is, def'ts Eaton & Badge. They therefore pray said property be attached and the said deed of trust set aside for fraud, and if not, that any surplus remaining after the execution of said deed & satisfaction of the debts bona fide secured thereby, if such be the decree of the court, be ap-

plied to the satifaction of such decrees *or* compl'ts may recover
404 in this cause.

Compl'ts further charge that the interest of compl't H. L. is and was as follows: one-half in her own right, and one-eighth as the executrix of the estate of J. A. Whiteside, dec'd, and the other interests in said property belonging to R. Cravens and J. P. Boyce. The rental to them was a matter to be regulated between them & said Badge & Eaton with which compl'ts have had nothing to do, and in what manner paid to them, compl'ts do not of their own knowledge know. Compl't H. L. in said lease only had contracted in relation to that part of the rental to be paid to her. Compl'ts pray for all the specifications by them heretofore in this bill indicated, now further pray for all such other further & general relief as they may be entitled to on the facts of the whole case.

This is compl'ts first application for an attachment & injunction in this cause.

V. A. GASKILL.
H. L. GASKILL,
By V. A. GASKILL.

TREWHITT & TREWHITT, *Sol's.*

405 STATE OF TENNESSEE,
Hamilton County:

Personally appeared V. A. Gaskill, one of the compl'ts named in the foregoing bill & made oath in due form that the facts stated in the foregoing bill of complainant's own knowledge are true, & those stated upon information of others, he believes to be true.

V. A. GASKILL.

Sworn to & subscribed before me Dec. 4th, 1874.
J. A. CALDWELL, *C. & M.*
By J. T. HILL, *D. C. M.*

The clerk & master of the chancery court at Chattanooga, will issue writs of attachment & injunction as prayed for in the foregoing bill on bond & security being given therefor, in the penalty of two thousand dollars, and bond for costs as requird by law, December 4th, 1874.

D. M. KEY,
Chancellor.

(Endorsed:) "Filed 5th December, 1874. J. A. Caldwell, C. & M., By J. T. Hill, D. C. M. A true copy. J. A. Caldwell, C. & M., by J. T. Hill, D. C. & M."

(Endorsed:) No. 1587. Copy. Or. att. & inj. bill. V. A. Gaskill & wife vs. John Badge et als. Issued 5th Dec. 1874. J. A. Caldwell, C. & M., by J. T. Hill, D. C. & M. No. 2.

406 *Exhibit No. 3.*

The separate answer of John Badge & A. C. Eaton, partners under the firm-name and style of Badge & Eaton, to the bill of complaint and attachment bill of V. A. Gaskill and wife, Harriet L. Gaskill, filed against them and others in the chancery court at Chattanooga, Tennessee.

These respondents, saving and reserving the usual benefits of exception to said bill, for answer say: They admit they leased of com-

plainant Harriet L. such indefinite description of land as is shown by Exhibit A to the bill, believing at the time she was owner of such interests as she represented herself to be. In the spring of 1867 John Badge and E. G. Eaton had an agreement with J. C. Haselton, concurred in by R. Cravens in his own right and as executor of James A. Whiteside's estate, to open what was afterwards called the Vulcan mines. Under this agreement said Badge & Eaton obtained the possession of the land complainant Harriet L. leased to respondents, who expended a large amount of money, some $3,000 or $4,000, driving entries, building houses, tram-ways, incline planes, coal shutes,
407 &c., &c. In the autumn of 1867 A. C. Eaton became a member of the firm of Badge & E. G. Eaton. In December, 1867, complainant Harriet L. claimed title to the lands, and had a writ of possession in the case of E. Alley vs. Haselton Agnew et als. in the hands of some officer, which contained descriptions of divers sections and parts of sections with which it was threatened to dispossess respondents unless they would become complainants' tenants. Not knowing but that said writ embraced the lands they were upon, as they were told it certainly did, they consented to attorn to complainants and retain the possession. By the said agreement with Haselton they were not to pay rents until after they had shipped coal for three months, this being the usual custom for loss of time in introducing and getting the coal fairly into the market. Respondents continued to work in preparing the mines for shipments of coal until about the first of the year 1868. The first rentals, however, were paid in August following. Up to *to* the 1st of June, 1870, they had paid complainant Harriet L. in full of rents $1,416; and, as will be seen, as hereinafter shown, the estate of
408 Whiteside was entitled to $\frac{1}{8}$ of that sum, or $172. Prior to June, 1870, respondents had no written lease from complainant, and up to that time they had expended some eight or ten thousand dollars. By menaces and threats, and the fear of losing all, if evicted, they were forced to accede to the terms of said lease, which she had her attorney to prepare. The character of the expenditures and improvements were comparatively worthless to any save parties operating the mines. The lease was made with Harriet L. in person, in the city of Chattanooga. She had never been upon the lands, so far as respondents knew, but assumed she owned that whole region of country. And because of the vast quantity of land contained in said writ of possession, and as she was interested in 18,000 acres of land leased the Raccoon Mountain Coal Company, extending into the neighborhood of the Vulcan mines, an extensive territory, respondents were impressed with her imaginary idea, that she was the owner as claimed of the lands embracing the Vulcan mines. She had no map, and respondents were ignorant and strangers to the boundaries, and did not
409 know to whom the land rightfully belonged. In the opulence of complainant they felt a security, and were the less anxious as to the title.

It was her intention to lease, and respondents thought they were leasing, an entire section of 640 acres of coal land embracing the Vulcan mines, with adjoining quarter sections for timber to be used for building purposes, for approaches to the mines, &c., &c. Nor did respondents, after years of labor, know any better till the summer of 1874, when the lands were surveyed by the county surveyor, lines run and designated, what section or quarter section the Vulcan mines were upon.

It is true that during all this time J. C. Haselton notified respond-

ents that he was the real owner of the half-interest in the lands they were running. He had brought his action of ejectment, but respondents notifying complainant gave the matter no further concern. Haselton required of them all along returns of rents, which they rendered, but paid only to complainant, knowing her solvency in the end would protect them.

410 As will be seen from said lease respondents were to have the section then occupied by them. The Vulcan mines are located upon the SE. ¼ of section 3, which complainant did not own; and after said survey, in the summer of 1874, it was ascertained was not included in said writ of possession. The estate of said Whiteside held ⅛ interest. Nor did complainant own either of the three remaining quarter sections of said section 3, but which were a part of 18,000 acres embraced in the Ætna lease, as it is termed, the lease to the Raccoon Mountain Coal Company, the fee belonging to the estate of Whiteside, Cravens, and Boyce, except, however, 80 acres of the NW. ¼ of section 3, owned by J. M. Carroll. From said survey it was ascertained that there was only 20 or 30 acres really of coal land on said SE. ¼ of section 3, and part of that respondents aver was not workable, because of the thinness and faults in the veins and horsebacks, to use a mining phrase. In consequence of which respondents had to extend their workings in search of coal veins to other localities, and in doing so unwittingly

411 ran into quarter sections not belonging to complainant, and have mined therefrom certain amounts of coal that can be only ascertained by surveys and proofs after said surveys. Respondents finding complainants without any title to the lands have delayed to pay them further rents, and decline to do till complainant can show a valid title. In further explanation respondents would state that the Vulcan mines, as worked so far, comprises the coal lands on said SE. ¼ of section 3, lying next the Nashville & Chattanooga Railroad, and portions of the N. ½ of section 10, the NW. ¼ of section 11, and perhaps laps over the borders of the SW. ¼ of section 2, all in the 2d fr. t. 6, range, &c. Complainant Harriet L., at the time of said lease, had not title to said SE. ¼ of section 3, as stated, nor has she since acquired any valid title thereto. She was, in her own right, the owner of an undivided half in the N. ½ of section 10; she had no interest in her own right in the NW. ¼ of section 11, which is a part of said 18,000 acres embraced in the Ætna lease, as stated. In said SE. ¼ of section 3 and N. ½ of section Boyce and Cravens had a ⅜ interest, and the estate of White-

412 side ⅛ interest. Boyce & Cravens had ¾ interest in NW. ¼ of section 11, and the estate of Whiteside ¼ interest. The SW. ¼ of section 2, adjoining the SE. ¼ of section 3, is owned by Stevenson and Stone. J. C. Haselton claims title to an undivided half, the SE. ¼ of section 3, for which he has regular deeds of conveyance, and on the 18th day of January, 1874, he purchased of Boyce and Cravens their ⅜ interest in said SE. ¼ of section 3 and N. ½ of section 10 and their ¾ interest in said NW. ¼ of section 11; and on the 17th day of December, at a chancery sale in the case of W. B. Whiteside and others vs. Harriet L. Gaskill and others, in this court, he purchased the ⅛ interest of the Whiteside estate in said SE. ¼ of section 3 and in the N. ½ of section 10, becoming, therefore, the sole owner of said SE. ¼ of section 3, and an undivided half owner in the N. ½ of section 10 and ¾ owner in the NW. ¼ of section 11.

It will thus be seen that at the time of said lease complainant Harriet L. in her own right had no title to any of these lands described, except the one-half in the N. ½ of section 10.

413 Before said written lease respondents had paid complainant Harriet L. as follows:

	For the year 1868	440 00	
	" " " 1869	454 00	
Jan'y.	" " " 1870, in part	180 00	
			1,074 00
Credit by Boyce & Caravens' portion of $400, in 1868			133 33
			$940 67
From January, 1870, to June 1, 1870			475 00
Amount paid complainant to date of lease			1,416 07
From June 1, 1870, to Jan'y, 1871			407 00
From Jan'y 1, 1871 " " 1872			518 00
For the year 1872, cash & bills payable			1,900 00
" " " 1873, " " "			1,030 85
" " " 1874, (February) cash			100 00
Total rentals realized by complainants			$5,371 92

Respondents filed herewith, as Exhibit A to this answer, an account of coal mined monthly from June 1, 1870, beginning of the lease to December 1, 1874, as required by the bill, and which will show the incorrectness of the maximum rentals set out in the bill. On the 3d day of November, 1874, said Haselton filed his injunction bill in the chancery court at Jasper to collect from these respondents and complainants his rents.

The firm of Badge & Eaton was originally Badge and E. G. Eaton, A. C. Eaton afterwards coming into the firm, as already stated. On the 7th day of November, 1874, E. G. Eaton retired from the firm
414 by consent, with the understanding that respondents should furnish security to the extent of $2,500 to be used in liquidating the debts of the firm. In carrying out this agreement respondents induced J. C. Haselton to endorse their paper to the amount of $2,500, all parties conveying their property in trust for the security of the payment of said notes, and $1,000 for rents. Said paper has all been transferred to creditors of the firm. Said trust deed said Haselton will file with his answer. This was a fair, straightforward, advantageous transaction. Respondents deny any fraudulent combination or confederation with said Haselton to defraud complainants out of their rents or means to collect their debts. They deny operating said Vulcan mines upon the lands leased the Raccoon Mountain Coal Company with any fraudulent interest or purpose. If they have mined in the same it was in ignorance of the boundaries, not knowing the lines, as already stated, and believing they had a section for their mining operations leased them by complainant, which would have afforded ample
415 room for extending their work. Respondents deny any fraud or collusion between them and said Haselton touching any of the matter in question in this cause.

It is quite probable that the houses and buildings mentioned in the bill are upon the SE. ¼ of section 3. Respondents, in ignorance of boundaries, by mistake, the fault of complainant by their indefinite lease as to the section demised, have felled timber necessary for the working of the mines from surrounding sections of land, as authorized under said lease, and in doing so trespassed upon the property and rights of

said Haselton as owner or lessee, for which said Haselton holds respondents accountable, and for these wrongs and injuries it is the b'urden duty of complainants to account to them. These damages will be ascertained by proof, and will amount to a large sum.

Respondents think the judgments recovered against them, as set forth in the bills, are correct, but reserve the right to show errors if any exist. It is true all rents claimed by complainants were settled up to the 11th day of October, 1873, as stated in the bill. They admit the exe-
416 cution of the trust deed of E. G. Eaton to secure $1,000 of rent notes as charged.

The lease does not require a production of respondents' books, but they are willing to produce them when required. Exhibit A to this answer is an abstract from said books.

It is true respondents do not intend to renew said lease, and they disclaim themselves as tenants of complainant most sorrowfully. After years of toil, patience, and anxiety, incurring large expenditures, from ten to fifteen thousand dollars, they are deprived of their reward when almost within their grasp, by the mistake of complainant' in leasing lands to which they had no title at all to grant a lease; are trespassers upon the billows of equity, and for all which respondents insist they should be reimbursed, to enure to the demands, liabilities, and damages for which they have to account to said Haselton. Respondents, having fully answered, pray that this answer be filed as a cross-bill against complainants; that they be served with process to answer by the June
417 rules next, and upon failure to disclose a valid title to said leased premises other than the undivided half of the N. ½ of section 10, that said lease be cancelled and held for nought, and that said rent-money wrongfully and by mistake collected be refunded them, said judgments perpetually enjoined, and for an account as to said rents E. G. Eaton has secured by his trust deed, and for all outlays, expenditures, and improvements and taxes paid by them, in which they have sustained loss, and for the damages and liabilities incurred in using timber on lands belonging to others, and for all and every such matter they pray for necessary orders and decrees, and for all such other and further relief respondents or complainants in this cross-bill pray your honor, as in duty bound they will ever pray, &c.

NASH H. BURT, *Sol'r.*

STATE OF TENNESSEE,
Hamilton County:

This day personally appeared before me A. C. Eaton, of the firm of Badge & Eaton, and made oath that the facts stated in the foregoing answer and cross-bill are true, to the best of his knowledge, information, and belief.

A. E. EATON.

418 Sworn to and subscribed before me Ap'l 12th, 1875.

J. A. CALDWELL, *C. & M.*

(Endorsed:) Filed 13' Ap'l, 1875. J. A. Caldwell, C. & M.

A true copy.

J. A. CALDWELL, *C. & M.*
By J. T. HILL, *D. C. & M.*

(Endorsed:) No. 1587. Copy ans. & cross-bill. V. A. Gaskill & wife vs. Badge & Eaton & others. Made 14' April, 1875. J. A. Caldwell, C. & M., by J. T. Hill, D. C. & M. No. 3.

Exhibit No. 4 to agreement.

The separate answer of J. C. Haselton to the bill of complaint of V. A. Gaskill and wife, Harriet L. Gaskill, filed against him & others in the chancery court at Chattanooga, Tennessee.

This respondent, saving & reserving to himself the usual benefit of exceptions to said bill, for answer to so much thereof as he is advised it is material for him to answer, says the Vulcan mines were opened in 1867. John Badge & E. G. Eaton had an agreement, perhaps in writing, with R. Cravens & respondent, under which they possessed
419 themselves of the premises. No rents were required till after three months from the time they should have been ready & made shipments of coal. They were thereafter to pay two cents per bushel for all coal mined & shipped. This contract was made for the benefit of all parties in interest. The mines were opened upon the SE. ¼ of section 3, of which respondent was the owner of an undivided half interest, Boyce & Cravens together the owners of ⅜, and Whiteside's estate ⅛. A. C. Eaton afterwards became a member of the firm of Badge & Eaton. Complainant Harriet L. demanded rentals, & induced Badge & Eaton wrongfully to attorn to her. In June, 1870, she gave them a written lease of a section of land, embracing the Vulcan mines. She has, for herself alone, collected a large sum of rents, which will be shown by proof. Respondent never yielded his demands for rents, & required of Badge & Eaton regular returns of all the coal mined & shipped to the present time, but they never paid him any money.

In January, 1874, respondent purchased of Boyce & Cravens their interest in said SE. ¼ of section 3 & their ⅜ interest in the N. ½ of sec-
420 tion 10 & their ¾ interest in the NW. ¼ of section 11; said purchase embracing a number of other sections. On the 17th day of December, 1874, at a chancery sale, in the case of W. B. Whiteside et als. vs. Harriet L. Gaskill et als., in this court he purchased the ½ interest of the estate of said Whiteside in said lands, except in said NW. ¼ of section 11, & other lands in which said estate has ¼ interest, & which are included in the Raccoon Mountain lease of 18,000 acres, owned by respondent under a purchase at trustees' sale of R. Cravens vs. said company, in this court, No. 417. In the above-described lands complainant Harriet L. is the owner of an undivided half interest in said N. ½ of section 10. These lands are in the 2nd fr. t., 6 range west, &c.

In the summer of 1874 the lands were surveyed, when it was ascertained that Badge & Eaton had extended their work in mining beyond the boundaries of said SE. ¼ of section 30 within the boundaries of said N. ½ of section 10 & NW. ¼ of section 11. Badge & Eaton, from the indefinite description of land in their lease & ignorance of
421 boundaries, were not aware of the true state of titles & b'undaries till after said survey.

Respondent, no longer willing to brook delays, did, on the 3d day of November, 1874, file his bill in the Jaspar chancery court against said Badge & Eaton & complainants, to collect his rents, praying for a receiver, &c. Badge & Eaton were pressed by their creditors, & desirous to work the mines that they might save themselves from heavy sacrifice, to this end they induced respondent to endorse their paper to the extent of $2,500, which they have passed to their creditors, & on the 7th day of November, 1874, executed a deed of trust to secure respondent in $1,000 of rents, &, upon his endorsement, conveying certain property, as will be seen from a copy of said deed of trust filed

herewith as a part of this answer, marked Exhibit A. This was a fair, 'traightforward, regular business transaction, wholly free from any fraudulent intent or purpose, combination or collusion, & in regard to any & all such charges in the bill they are emphatically denied by respondent. Respondent denies that Badge & Eaton have en-
422 tered into any fraudulent contract with him to defeat complainants in the collection of their debts, & the mining of coal on the leased property was for a time unknown to the parties, & was not done nor now mined by any fraudulent contrivance or collusion of any of the parties. Respondent is entitled to have & receive rents as owner of the property shown, which have unjustly been withheld from him. It is true complainants, as well as himself, are estopped in denying that said buildings & improvements are upon said NE. ¼ of section 3. Respondent, having fully answered, prays to be dismissed with his reasonable costs.

NASH H. BURT,
Solicitor.

STATE OF TENNESSEE,
Hamilton County:

This day personally appeared before me J. C. Haselton & made oath that the facts stated in the foregoing answer are true, to the best of his knowledge, information, & belief.

J. C. HASELTON.

Sworn & subscribed before me April 13, 1875.

J. A. CALDWELL, *C. & M.*,
By J. T. HILL, *D. C. & M.*

423 *Exhibit A to No. 4*

The firm of Badge & Eaton, of the Vulcan mines, in Marian County, Tennessee, is composed of John Badge, E. G. Eaton, & A. C. Eaton. It is agreed between us, & we respectively convey as follows: All the property of the Vulcan mines belongs to & becomes the property of John Badge & A. C. Eaton, under a new firm of the name of Badge & Eaton; & the saw-mill property at Shellmound, property of the late firm, belongs to & becomes the property of E. G. Eaton. John Badge, & A. C. Eaton, it is agreed, are to pay the existing debts of said late firm against the Vulcan mines, & E. G. Eaton is to pay the debts against said saw-mill property. Said late firm is indebted to James C. Haselton in the sum of $1,000 for rents due him for ⅜ interest in said mines; is also indebted to the First National Bank, at Chattanooga, & to R. L. Weakley, Fischel & Brother, Evans, Fite, Porter & Co., & Carroll, Hollings & Co., of Nashville. To pay said bank & said Nashville creditors named. The new firm of Badge & Eaton (A. C. Eaton) have this day executed ten notes of $200 each, falling due monthly; the first at one month & the second a' two months; the third at three months, &c., on to
424 the end of ten months; & also two notes of $100 each, & one note at twelve months for $300; & all of said notes payable at the 1st National Bank of Chattanooga, & payable to said James C. Haselton to be by him endorsed & made negotiable & to be used in paying said bank & said Nashville creditors as aforesaid; and to secure said James C. Haselton, in the rents due him as aforesaid & for his endorsements upon said notes, we, John Badge & A. C. Eaton, do hereby transfer & convey to David B. Pillsbury all of our property at the Vulcan

mines, consisting of iron on the incline plane & in or about the said mines, the incline planes, five mules used in said mines, wire-ropes used in the mines, all incline cars, some 8 or 10, all bank-cars, some 40 in number, blacksmith tools, & all the coke now ready for market on said mines, a stone-house on the right of way of the N. & C. R. R., & all office fixtures, iron safe, desks, &c.

If any two of said endorsed notes shall become due & remain unpaid after maturity, then it is agreed that the whole number of said notes shall become due, & said Pillsbury as trustee is authorized to
425 advertise & sell any or all of said property herein conveyed to pay said unpaid notes & said debt to said Haselton for rent as aforesaid; said advertising will be such as required in execution sales. We waive the oath of said Pillsbury & the bond as trustee required by statute in such cases, until upon default in payments as aforesaid it becomes necessary for him to sell the property, when he will then give bond so as to secure any surplus of proceeds of sale for other creditors.

Nov. 7, 1874.

JOHN BADGE.
E. G. EATON.
A. C. EATON.

Duly acknowledged & registered same day.
The original will be produced if required on the trial.

Decree.—H. L. Gaskill vs. V. A. Gaskill.

H. L. GASKILL }
vs.
V. A. GASKILL. }

This case coming on upon this 17th day of July, 1879, & it appearing to the court that process was duly served upon the defendant on the 5th day of July, 1879, & no demurrer, plea, or answer filed, on motion of petitioner by solicitor, it is ordered & decreed by the court that the petition be taken as confessed & set for hearing;
426 and thereupon the case was heard upon the petition & the testimony taken in open court. And it appearing to the court from the testimony of witnesses examined in court that the defendant V. A. Gaskill, on or about the day of May, 1879, abandoned the petitioner, & refused, & still continues to refuse, to provide for her as his wife, the court is therefore pleased to order, adjudge, and decree that the bonds of matrimony heretofore subsisting between the petitioner, H. L. Gaskill, & the defendant, V. A. Gaskill, be, & the same are hereby, dissolved, and the petitioner restored to her condition & rights of a feme sole & to her name of H. L. Whiteside, in as full & ample a manner as if said marriage with the said V. A. Gaskill had never been solemnized. The court is further pleased to order and decree that the defendant pay the costs of this case for which execution is awarded.

(Endorsed:) H. L. Gaskill vs. V. A. Gaskill. Decree. No. 7366. Filed Sept. 10, 1879. A. R. Humes, clerk.

427 *Separate answer of E. G. Eaton.*

The separate answer of E. G. Eaton to the bill of V. A. Gaskill & wife, Harriet L., preferred in the chancery court at Chattanooga, against John Badge, A. C. Eaton, this respo't, et als.

It is true that the female compl't was formerly Harriet L. Whiteside, & is the party who granted the lease dated June 1st, 1870, made an exhibit by compl'ts. At the date of said lease the firm of Badge & Eaton, then composed of John Badge, this respo't, & A. C. Eaton, occupied & were operating in mining coal the SE. quarter of section third, 2nd fractional township, 6 range west of the basis line Ocoee district. It is not true, however, that said firm, at the date of said lease, knew, or professed to know, what section or quarter they were upon, or what was the location or boundary, or who was the owner of any given section or quarter. Compl't Harriet L. did not rely upon them for information as to what section or quarter she owned in whole or part. As to what lands she owned, & as to the extent of her interest, the firm of Badge & Eaton relied upon her, & had faith to believe she
428 knew, or would not practice a fraud. What the professed to know was coal mining, not titles or boundaries. Badge & Eaton never did know what quarter or section was covered by their lease until the summer of 1874, when a survey was made which defined location & boundaries. Badge & Eaton did not take possession of the property known as the Vulcan mines under said lease of June 1st, 1870, or under compl't Harriet L. The facts are these: In the spring of 1867, under an agreement with J. C. Haselton & R. Cravens (the latter in his own right & as executor of James A. Whiteside), John Badge, and respo't, commenced mining operations upon the property, under the firm name of Badge & Eaton. Later in the same season A. C. Eaton became a member of the firm, without a change of the firm name. In Dec., 1867, compl't Harriet L., claiming the largest interest in the lands the firm were operating for coal, had procured a writ of possession from the Supreme Court, in the case of Alley vs. Haselton, Agnew et als., & threatened to evict the said firm unless they acknowledged her as the landlord. This writ specified quarters
429 & sections of the location & boundaries of which Badge & Eaton knew nothing, but being assured by the agent of compl't Harriet L. that the writ did embrace the land they occupied, & on which several thousand dollars had been expended by said firm in preparations for mining, & believing the asseverations of said agent, & that the firm would be evicted & lose everything in case they stood out, Badge & Eaton consented to attorn to compl't Harriet L. & to pay her the rent. This rent the firm continued to pay until June 1st, 1870, when the lease was executed. The lease made an exhibit by compl't was not voluntarily executed by Badge & Eaton. Compl't Harriet L. refused to let them occupy the land they were operating longer, unless they accepted the written lease, & they were threatened with being ejected if they refused. A large additional sum, in all amounting to some eight thousand dollars, had been expended to prepare the property for successful coal mining. Their expenditures had exceeded their receipts, & they accepted the lease to save what they had expended in the hope of making the enterprise successful in the future.
They accepted it, believing that compl't Harriet L. had a right
430 to lease "the section" they occupied; that her interest in this section was what she represented it, & that the writ of possession

designated the land they occupied, & by which they could be evicted. It has been a system of coercion from the beginning, Badge & Eaton believing from the representation of compl't Harriet L., or her agent, that they were subject to eviction any hour if they failed to comply with compl'ts' demand. This respo't was not a party to the lease of June 1st, 1870. When he subscribed to it, two years afterwards, it was under the spur of a threatened eviction for failure to pay minimum rents, & at the same time, by the same means, he was induced to execute the deed of trust to secure $1,000 of minimum rents then claimed to be due, rather than lose all by a forfeiture.

Respo't now knows, & has known since the survey referred to was made (in the summer of 1874), but never before, that compl't Harriet L. had no transferrable interest in three of the four quarters of the section then & before occupied by Badge & Eaton at the date of said lease. That the writ of possession held over them did not embrace the land Badge & Eaton occupied at & before
431 the date of the lease; that as to the remaining southeast quarter of section 3 covered by the lease, the ownership of the undivided half interest claimed by compl't Harriet L. is a question between said Harriet L. & def't Haselton, the ¼ of the remaining ½ interest in this S.E. quarter of section 3 was in the estate of James A. Whiteside, & is not in dispute, but since sold to def't Haselton. Said survey shows further, that of the S.E. q'r of section 3 alone subject to the lease, there is only about 18 acres of coal upon it, & that so hedged with faults & other impediments to mining operations that it was practically impossible to mine 600 tons of coal out of it for five years, & utterly impossible to mine from it through intervening rock & slate with profit in any quantity. Respo't leaves the question as to the ownership of the undivided half of the S.E. q'r of sec. 3 to be determined between the parties. He insists, however, that the lease set up by compl'ts is void for fraud if compl't H. L. or her agents knew of her defect of title, or because of mutual mistake if they did not know. By the instrument referred to compl't Harriet L. undertakes to secure Badge
432 & Eaton in the use of "the section" of land then occupied by them for mining purposes, & pledges to them "an undivided interest of one-half in the 'whole section' & an interest of one-third or one-fourth in the other undivided half." It is a covenant that she has control of & can quiet Badge & Eaton in the possession of ⅔ or ¾ of a whole section of 640 acres of coal lands, & the same section the "Vulcan mines" were on. Based upon these covenants Badge & Eaton covenant to mine from this land 600 tons of coal per month at the least, pay for it 25 cts. per ton, & at the same rate for any excess. Of the minimum monthly rental of $150.00 compl't Harriet L. claims $100.00 *dollars* per mo. as her proportion or ⅔ of the whole. Badge & Eaton did & well might believe they were leasing 640 acres of lands in which there would be ample scope to drive new entries & search other fields of operation if physical difficulties were encountered in one or many directions. Under this delusion Badge & Eaton went on making expenditures befitting extensive mining, reaching some fifteen thousand dollars up to the time the survey was made in 1874.
433 This survey demonstrated that three quarter sections of the section leased to them was covered by the prior lease (except 180 acres owned by Carroll). This reduced their lease to a single quarter section, the SE. q'r of sec. 3, & this 160 acres out of 640 acres was located in a cove or gorge, with only eighteen acres of coal upon it. This eighteen acres was found to be practically worthless for mining

on account of faults & other impediments to successful mining. Badge & Eaton would never have attorned to compl't Harriet L. if they had known the facts. They would never have expended fifteen thousand dollars, or a tithe of it, to reach the outcropping margin of a coal-field limited to eighteen acres, nor would they have accepted the lease with these facts before them. Badge & Eaton were deceived & greatly to their injury by the covenants & representations of compl't Harriet L. & her agents, through ignorance if not by design, & respo't insists that it would be inequitable & palpably injust to enforce execution of the lease under circumstances like these. In view of these facts
434 respo't denies that compl't Harriet L. has lived up to the express or implied covenants of her lease (unless in receiving rents, which requires no great sacrifice), & respo't insists that in a court of equity compl't H. L. would only be entitled to the reasonable rental value of any interest she may have in the SE. quarter of sec. 3, without regard to the lease, & after deducting the damages Badge & Eaton may have sustained in the premises, & he insists that said compl't should be required to refund rents improperly received, not equitably due her. Respondent denies that rents of any character are equitably due compl'ts, they having been largely overpaid what the rent of the property is reasonably worth & measured by the extent of the proportionate interest of compl't. He denies that the judgments set up by compl'ts are just. He denies that it would be equitable to execute or foreclose respo't's deed of trust to compl't V. A. Gaskill, because the minimum rents represented by said judgments & trust are not equitably due by virtue of said void lease or otherwise.

Respo't denies that over 600 tons per month have ever been
435 mined on the land covered by the lease. After the survey in 1874 it was ascertained that entries had been driven beyond the boundary of the section leased. This was done to escape a fault in the coal, but in ignorance of the true boundary & in ignorance of the fact that the lease was limited to 18 acres of coal. All excess of coal mined over 600 tons per month was due to entries carried beyond the lease. For its recitals respo't refers to the lease itself, but directs the court specially to the provision that Harriet L. is to receive of the total $150.00 rents, "a proportion equal to her interest in the lands." By the lease she claims & has received $100.00 as her proportion, or a whole half & one-third of the other half, making $\frac{2}{3}$ of the whole. By her bill she only claims $\frac{5}{8}$ of the whole, or $93.75 per month, & has consequently received $6.25 per month too much. This monthly excess this compl't should refund if the lease is held operative; if held void she should account for a much larger monthly excess, if she is entitled to anything.

It may be true that compl'ts have correctly given the am't &
436 date of the several judgments set up. These judgments are erroneous, as resp'd't insists, because founded upon a void lease, & because even if the lease is valid they are erroneous in the excess between $100.00 & 93.75 per month. The same defects apply to the one thousand secured by respondent's deed of trust executed under misrepresentation & delusion. When it was ascertained by survey that Badge & Eaton were mining coal upon lands not covered by the lease, & having been deceived as to the area embraced so grossly as well as to the location of the lease, or by the ignorance or design of complainants or their agents, said firm did refuse to pay any more rents because they believed, & still believe, they had paid already greatly too much. It is not true that Badge & Eaton have refused to exhibit their

books, these books have always been open to inspection, but the books do not show from what land the coal was mined, & in the absence of proof will give no aid in settling the question of rents.

Before any arrangement was made with defendant Haselton re-
437 spondent had sold out to John Badge & A. C. Eaton all his interest in the firm of Badge & Eaton. The trust executed for the benefit of said Haselton was the act of the new firm, with which respondent had nothing to do. Respondent joined in the execution of the paper only in reference to the contract of dissolution incorporated in the same instrument. As to the nature of the contract made by the new firm with Haselton the parties thereto can answer for themselves. Respondent has had no interest or connection with any contract with said Haselton in reference to mining on "Raccoon" property or any other since 1867. If most of the houses & buildings erected & used in operating the mines or on land in which complainant H. L. has no interest it was her fault in leasing "the section" occupied by Badge & Eaton. These buildings were erected before & since the date of the lease, & it was supposed they were on the lease. This mistake of fact by all parties will hardly transfer the buildings from one tract of
438 land to another, as respondent is advised. It is not true that there was any fraud or pretense in the sale of respondent's interest in the Vulcan mines; he denies that said sale had any reference to or was rendered by the judgments obtained by complainants on the same day (as respondent has since learned). There was a proposition pending to compromise the justices' suits, & the judgments were a surprise; respondent did not expect judgments to be taken, & did not know they had been taken until after the sale of his interest. The sale of respondent's interest in the firm of Badge & Eaton was an honest, straightforward business transaction, made in entire good faith, without fraud or pretense or design to cover up or to hinder, delay, or defraud creditors. Respondent was anxious to get out of the concern with as little injury as possible, & protect himself against the liabilities of the concern as far as he could. Respondent succeeded in obtaining security for two thousand five hundred dollars of the liabilities
439 which had been applied as stipulated. The endorsement of defendant Haselton was negotiated by the new firm. It is not true that there was any fraud in fact or by design in the deed of trust executed to A. A. Hyde, as trustee, covering the steam-mill property at Shellmound. The mill had been purchased of John B. Tolley, who, on the 8th of July, 1873, recovered a judgment in the circuit court of Marian County $925.81; upon this judg't was paid Nov. 26th, 1873, $20.00, & Feb'y 20th, 1874, $200.00; in addition to these sums respondent claims a credit of about $90.00. The residue & interest is justly due & unpaid, & in all honesty & fairness should be secured by a deed on the property for which it is the purchase price. Said trust also secures respondent's mother as an endorser on respondent's note in the case of A. Teachocte vs. E. G. & N. G. Eaton, pending in the circuit court at Chattanooga, & as stayor of a judgment now involved in the chancery court at Chattanooga in the case of Milo Pratt et als.
vs. J. W. Procter et als. The design was to save his mother
440 harmless in cases either or both liabilities should be fastened upon her, & for which respondent has no apology to offer. The attachment in this cause was levied upon a sufficient amount of property belonging to the new firm of Badge & A. C. Eaton not covered by any incumbrance more than sufficient to satisfy all the exorbitant demands complainants have made in their bill. The sheriff of Marian

County levied upon everything pertaining to the Vulcan mines, took it into his possession, & held it for twenty-four hours. After which, by the direction of the solicitors of complainants, all this property was surrendered to the new firm of Badge & Eaton, against the objection & protest of this respondent, no security being required or taken. Respondent had abandoned the lease when he discovered the area it covered, & had refused to renew a contract so ruinous, & had dissolved his connection with the firm. In case the lease should be held valid & binding on Badge & Eaton to pay minimum
441 or other rents to the end of the five years respondent was unwilling longer to be bound. As the property had been attached sufficient to pay all that complianants claim, it was bad faith on the part of complainants to release this property without being replevied, in violation of respondent's protest, & he insists that in justice & equity he is thereby released from all liability for rents, for which the old firm may be held liable, & estops complainants from setting up any claim for rents against this respondent under the lease, if held valid from the date of said surrender. A schedule of the property attached, with the values extended, is filed herewith, upon which the facts stated appear in an endorsement by the sheriff, all of which is made a part of this answer. The letter of instructions from complainants' solicitors to the sheriff is attached, as a part of the sheriff's return to the attachment, & is referred to. Respondent admits that an account of rents should be taken to ascertain what would be a reasonable rent of
442 the premises leased, taking into view the limited extent of coalfield embraced, its character for mining purposes, & the damages sustained by Badge & Eaton in making heavy expenditures to little purpose, prompted by a mistake wholly caused by complainants. Respondent denies that the lease or its terms, obtained by mistake & delusion, should have anything to do in fixing the liability for rents, & he insists that Badge & Eaton should have a decree for excess of rents paid to complainant H. L., & for damages inflicted by said complainant as aforesaid. This respondent has had nothing to do with any arrangement with defendant Haselton for mining "Raccoon" property over "Vulcan" lands since Dec., 1867; he has acknowledged complainant Harriet L. as his landlord until he dissolved his connection with the form of Badge & Eaton, only refusing to pay further rents, or renew the lease, when he discovered the extent of the lease. Respondent is not now a member of the firm of Badge & Eaton, & has no
443 control of the books required to be produced. These books, however, will fail to show the amount of coal mined on the lease, because only the amount appears, without showing what land the coal came from. Where the coal came from will be a question of evidence. Respondent insists that the seizure of the Vulcan mines under the attachment in this cause put an end to the lease, if held valid, so far as this respondent is concerned, who refused to receive it back into his possession. The surrender was to the new firm against respondent's protest, & complainants must look to the new firm for any rents to accrue under said lease from said seizure. Respondent having fully answered, prays to be dismissed with his costs.

A. A. HYDE,
Sol. for Respondent.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before me E. G. Eaton, who made oath in due form, *and* to the statements in the foregoing answer are true to the best of his knowledge, information & belief.

E. G. EATON.

444 Sworn to & subscribed before me this 8th May, 1875.
J. A CALDWELL, *C. & M.*
By J. T. HILL, *D. C. & M.*

M'DSE. IN STORE.

10	sacks meal	$18 00
8	half sacks flour	15 00
1	b'r'l "	7 50
2	s'ks coffee	80 00
3	kegs powder	13 00
2	" nails	10 00
600	lbs. bulk sides, 14	84 00
1	bush. sweet potatoes	1 00
5	" turnips	2 50
1	br'l coal oil	9 50
¾	" vinegar	6 50
½	" syrup	13 00
½	" sugar	5 00
1	b'x soap	4 50
10	lbs. pepper	2 00
15	" tobacco	7 50
	Drugs	5 00
1	keg soda	8 00
6	p'r shoes	15 00
75	" socks	15 00
	3,000 ft. lumber	48 00
445	300 " timber	24 00
	8 coke-oven rings	53 00
1	coffee mill	2 00
1	iron safe	50 00
2	desks	30 00
2	scales	60 00
1	stove & furniture	5 00
1	show case	3 00
	Counter & shelves	20 00
3	chairs	4 00
		$623 00
10	large encline cars, $60.00	600 00
30	bank cars, $30.00	900 00
4,000	bush'ls coke	560 00
		$2,683 00
3,900	bushels coal	390 00
1,000	" iron	20 00
1	lot blacksmith' tools	50 00
1	" carpenter's "	20 00
1	" shovels	10 00

2	wire ropes	650 00
1 lot	" "	50 00
	Iron on tracks	2,500 00
2	drums	175 00
1	jack-screw	3 00
500	feet 1½ inch pipe, 20	100 00
300	" 1 inch " 15	45 00
	3 bedsteads, 4.00	12 00
446	2 single bedsteads, 3.00	6 00
	4 matresses, 2.00	8 00
125	blankets, 1.50	187 50
2	tables, 2.50	5 00
2	cook stoves & fixtures, $25.00	50 00
2	heating " 10.00	20 00
1	bake-oven	5 00
1	wash-boiler	5 00
1 lot	dishes, plates, & pans, &c	50 00
1	safe	4 50
8	lamps	4 00
500	lumber	5 00
200	lbs. bacon	28 00
1	s'k meal	2 00
15	lbs. coffee	3 75
2	pair scales	75 00
40	coal-picks	25 00
30	shovels	9 00
7	hammers	12 00
7	coal wedges	4 50
½	b'r'l lard-oil	20 00
		$7,237 25

Houses—four frame, penetentiary, & guard-house; seven or eight log houses.
5 mules; 2 oxen.

(Endorsed:) No. 1587. Answer of E. G. Eaton. V. A. Gaskill & wife vs. John Badge & al. Filed 8th May, 1875. J. A. Caldwell, C. & M., by J. T. Hill, D. C. & M. Filed Sept. 10, 1878. A. R. Humes, clerk.

447 *Answer of V. A. Gaskill & wife to bill of Badge & Eaton.*

The joint & separate answer of V. A. Gaskill & wife, H. L. Gaskill, to the cross-bill of complainants, Badge & Eaton, filed against them in the chancery court at Chattanooga, in the original case in said court, of V. A. Gaskill & wife, H. L. Gaskill, vs. them, J. C. Haselton et als.

These defendants, answering said cross-bill, refer to & adopt the allegations & charges in their original bill in this cause as true, & relies upon the same as part of this answer so far as applicable, & now, directly answering the charges of said cross-bill, respondents deny that respondent H. L., at the time she executed the lease in question to complainant, answered that she was the owner of all the land in that region. Respondents do not know what imaginary impressions were made on respondents' mind as to the extent of the land owned or claimed by respondent H. L., but suppose they believed she was the owner of the land, or interest therein which she claimed, and of that leased to

them. It is true respondents had no map of the land at the time, but it is not true that complainants were strangers to the land, but
448 it is true respondent H. L. was comparatively unacquainted with the land, or the boundaries thereof, but complainants were acquainted with the land, had been engaged in mining coal at that place, or in that region of country, & actually professed to know all about the mine & the coal & the land, & they did know the land belonged to respondent H. L. Respondents had no idea that complainant at the time thought anything about the opulence of respondent H. L., or of relying upon her warranty. Respondents admit that she was willing to & did lease to complainants all her interest in said section of land on which said Vulcan mines were situated, which interest was one undivided half & one of the other undivided half, & respondents refer to the said lease or copy thereof, which is appended to their original bill as showing the terms of said lease. Respondents do not know whether complainants were ignorant or not as to what section or quarter section the Vulcan mines were on, & the buildings, until
449 the summer of 1874, when the lines were run out, &c., nor do they know what notices J. C. Haselton gave complainants, nor what secret understanding existed between them touching said lease or mines. It may be true that said Haselfon may have brought an action of ejectment against these defendants to recover said mines or land, or some parts of it or them, but it is equally true he dismissed or abandoned the said action, & it is also true said Haselton filed a bill in the chancery court at Jaspar, & that bill has been by him abandoned & dismissed. Whether complainant made returns to Haselton or not respondents do not know; if they did respondents suppose it was in confederation & fraud with Haselton, intended to injure respondents, & playing into the hands of Haselton, & in bad faith as tenant of respondent H. L. Gaskill. It is admitted that complainants did pay such rent as they did pay to respondents. They deny, however, that such payments were simply made because of her solvency. They made
450 such payments because in honor & in law, particularly the latter, required them to pay to respondents. Respondents suppose the description of the section of land upon which the Vulcan mines were located & embraced by the terms of said lease are correctly stated in the cross-bill, but should any error in the same exist they pray leave to correct it.

Respondents deny the charge that they did not own the land on which the Vulcan mines were located; they deny that complainant H. L. did not own the lands in manner & form indicated in said lease; they deny that said Vulcan mines were not embraced by the writ of possession; it was so understood, I know, by complainants, respondents, & J. C. Haselton, as well as by all parties having any interest in or connected with said mines or lands, & respondent H. L. was put in possession of the same as purchaser & owner, & the complainants were then in possession, & actually attorned to & become the tenants of respondent
451 with full knowledge of said J. C. Haselton, with whom they have since confederated with a view to injure respondents. It may be true that complainants had paid rents to respondent as alleged in the cross-bill up to 1st June, 1870, but as to all these matters of leases & rents & payments up to 1st June, 1870, respondents are advised it is not necessary to enquire or to investigate, as the same are not involved in this litigation; respondents do not know how much complainants had up to that time expended in improvements, &c., but they deny the charge that by menaces & threats & the fear of losing all, if evicted,

they were forced to accede to the terms of said lease; this charge is not only untrue, but is an absurdity. Complainants urged the contract & execution of the lease. It is true the lease was drawn by respondents' counsel, but quite acceptable to complainants & equally their choice. It is true the character of the improvements were principally valuable to such parties as might operate the mines & that the lease
452 was taken from respondent H. L. in Chattanooga, & that she had not been on the lands. Respondents do not know whether the mines on the SE. ¼ were not workable, in part because of the thinness & faults in the veins & horse-backs or not, & if so it was a matter with which respondents had nothing to do, and if one hundred times more valuable & workable & clear of horse-backs, respondents could not have claimed any more than the rental and rights secured under the lease, nor do they know why complainants extended their works in search of coal upon or into other sections; with this respondents had nothing to do, as respondents only claim the rent according to the lease & the benefit of other rights secured and on it, & this they have a right to whether complainants operated the mines at all. How much the complainants may have expended operating unwittingly into other sections & coal mines they do not know. Perhaps it may be true
453 that the same can only be ascertained by proof and accounts taken.

It is true that complainants have failed to pay rents, but they deny that such failure is owing to the causes or reasons stated in the cross-bill & deny their right to resist payment for such reasons & deny they have the right to require the exhibition of a title in fee, or that, *or that* they can be heard to dispute the title of respondent. Complainants have had, held, & enjoyed the possession of said mines & leased property ever since the date of said lease & to the full end of the said five years, without hinderance, eviction, or disturbance, & have in all things had the full fruit of their said contract & lease, & it is nothing to them whether respondents had a good title or not. It may be true that said SE. ¼ of sect. 3 did or does lie as alleged in the bill, & also other lands but as an abstract proposition & unimportant in this case respondents deny that said H. L. had no title to said SE. ¼ as alleged. It may be true that the interest & ownership in the other lands are & were as alleged in the bill & answer. Respondents deny the
454 charge that Haselton is the sole owner of the SE. ¼ of sec. 3 as charged; he has made some contracts of purchases giving a claim or interest as charged in the said other lands, but as to how all this is, if deemed important, complainants must show in proof. It may be true that from June 1st, 1870, to Feb'y, 1874, complainants did make the payments to respondents as alleged in the answer & cross-bill. It may be true that said Haselton did file his bill in the chancery court at Jasper to recover rents as alleged, & it may be that the original firm of Badge & Eaton were composed of John Badge & E. G. Eaton, & that afterwards that A. C. Eaton came into the firm as a joint partner or lessee, & it may be true that an arrangement was entered into between them & J. C. Haselton as alleged & at the time charged, but respondents deny that it was fair, but, on the contrary, they verily believe it was a fraudulent one & done with the view & purpose of cheating & defrauding respondents in the collection of their said rents. Respondents deny that the
455 operating of the Vulcan mines through & into the Raccoon Mountain coal leased land was in good faith, & innocently done, but was done in their opinion to, in some way, injure & defraud respondents in the enforcement of their rights under said lease of June 1st, 1870. Re-

spondents do not know whether complainants have been guilty of trespasses on the lands of Haselton or not as charged but if so it was an act of their own, or one done by collusion with Haselton & in their own wrong & without the aid or encouragement of these respondents, & they most emphatically deny any liability on their part to pay or make good any damages or losses on that account. Whether the damages can be ascertained by proof and amount to a large sum, respondents do not know, & they again deny that as to such damages respondents have anything to do. Respondents do not know the extent of investments made by said complainants. Respondents do not know
456 how near complainants came to grasping a fortune, but they deny they committed trespasses on the billows of equity. It may be complainants have been guilty of trespasses & wrongs that repells them from court of chancery & renders them odious to law & equity, but their abstract propositions are not very profitable or important. Respondents now having fully answered complainants X-bill deny all fraud & pray to be hence dismissed, & all the relief prayed by them in their original bill denied to them.

V. A. GASKILL.
H. L. GASKILL.

TREWHITT, GASKILL & TREWHITT.
Gaskill, Sol.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared, V. A. Gaskill & H. L. Gaskill & made oath that the facts stated in the foregoing answer are of their own knowledge true, & those stated upon information they believe true.

V. A. GASKILL.
H. L. GASKILL.

Sworn to & subscribed before me July 27, 1875,
J. A. CALDWELL,
C. & M.

457 (Endorsed:) No. 1587. Answer of V. A. Gaskill & wife to X-bill of Badge & Eaton. V. A. Gaskill & wife vs. Badge & Eaton, J. C. Haselton, et als. Filed 27 July, 1875. J. A. Caldwell, C. & M. Filed Sept. 10, 1879. A. R. Humes, clerk.

Proceedings in case of E. Alley, v. J. Homes Agnew.

E. ALLEY
vs.
J. HOMES AGNEW, J. C. HASELTON, SAM'L J. Agnew.

Be it remembered that the following proceedings in this cause was had:

Bill filed 30th day of June, 1860, in the words and figures following, to wit:

To the Hon'l. T. Nixon Vandyke, chancellor of the 2d chancery division of the State of Tennessee, presiding at Jasper:

The bill of complaint of Erasmus Alley, a citizen of Marian County, Tennessee, against J. Homes Agnew, a citizen of the State of New York, James C. Haselton, a citizen of the State of New York, and Samuel J. Agnew a citizen of Marian County, Tennessee.

Compl't respectfully represents & shows unto your hon. that about

the 29th day of January, 1859, he bargained and sold, and by deed of that date transferred and conveyed to def'ts J. Homes Agnew &
458 James C. Haselton the following-described lands lying in Marian County, Tennessee, subject, however, to certain reservations hereafter stated, to wit, the northeast & northwest quarter of section twenty-one, the northeast quarter of section twenty-eight, and the southeast quarter of section twenty-two, all in the first fractional township & sixth range west of the basis line in the Ocoee district; also the northwest quarter of section two, and one-fourth of the northeast quarter of section two in the second fractional township, sixth range, west of the basis line in the Ocoee district; also the undivided half of the northwest quarter of section one, in second fractional township, sixth range, west of the basis line in the Ocoee district, subject, however, to a lease for five years to Matthew Spencer, compl't's interest in said lease being conveyed by said deed; also the undivided half of the following-described tracts or parcels of land, to wit: Forty acres being the northwest corner or fourth of the southeast quarter of section ten, the southeast quarter of section eleven, the southeast quarter of
459 section two, the northwest fourth of the northeast quarter of section two, the northwest quarter and the remainder previously we granted (being one hundred and twenty acres) of the northeast quarter of section ten, the northwest corner of the southeast quarter of section ten, and the remainder previously we granted (being one hundred and twenty acres) of the southwest quarter of section nine, the east half of the southeast quarter of section ten, and the northeast fractional quarter of section fifteen (being thirty-eight acres) all in the second fractional township, sixth range west of the basis line in the Ocoee district, the right of way to and for the use and benefit of the Nashville & Chattanooga Railroad Co., and also the right & privilege of getting water over, through, and on said lands, were expressly reserved by the terms of said deed. This sale, transfer, and conveyance was made for the consideration of seven thousand five hundred dollars; of this amount was paid down by said defendants, afterwards, on the 10th day of March, 1859, the def'ts, J. Homes Agnew and
460 Haselton, drew two checks or drafts (the character of the instruments being somewhat equivocal) for two thousand dollars each in favor of your orator, and directed to the cashier of the Bank of North America, New York, drawing interest from date, acceptance waived, one payable six months after date, and the other payable twelve months after date. Copies of these checks or drafts are hereto attached marked Exhibit' A & B, and your orator asks that the same be taken and treated as part of this bill. These checks or drafts were drawn and delivered to yonr orator by said def'ts as a means of securing the payment of the remainder of said consideration or purchase price of said land. The said remainder of the consideration or purchase price, to wit, four thousand dollars, with accruing interest thereon, is now due and unpaid. Said checks or drafts are the only evidence of said indebtedness ever given by said def'ts. The checks or drafts have been duly presented to the cashier of the Bank of North Americа, New York, at said bank, for payment, and payment
461 thereof was refused by said cashier, and they have been duly and legally protested for non-payment, of all which the def'ts J. Homes Agnew and Haselton had due notice. Said checks or drafts are outstanding and unpaid. One of them, of which Exhibit B is a copy, has been mislaid. Your orator thinks it will be found; if so, it will be produced on the hearing. The other, of which Exhibit A is a

copy, will be produced on the hearing. No promissory note or notes were ever given or executed to your orator for said four thousand dollars. The balance of said purchase price said def'ts have repeatedly promised to pay the amounts due on said checks or drafts since they were protested for non-payment, but they have failed and still fail to pay the same. Your orator further shows to your honor that, as he is informed and believes, def't J. Homes Agnew on about the 8th day of December, 1859, sold and conveyed his interest in said lands to his son, the def't, Sam'l J. Agnew.

Sam'l J. Agnew is the son of J. Homes Agnew, and had
462 notice at the time of his purchase and the conveyance to him that the balance of said purchase money due your orator as aforesaid was still owing and unpaid, and he, the said Sam'l J., undertook and has repeatedly promised to pay the same, but he has failed to do so. Your orator is advised that he has a lien on said lands for the payment of the balance of said purchase-money due as aforesaid, and that he is entitled to have the same enforced by and under a decree of your hon'l. court.

The premises considered, your orator prays that copy and subpœna issue as to Sam'l J. Agnew, that publication be made as to the non-residents, defendants, that they be required to answer fully under oath the allegations herein. Let an account of your orator's debts be stated upon final hearing, let said lands be sold free from the right of redemption, and let the proceeds of such sale be applied first to the payment of the costs of this suit, and the remainder to the payment of your orator's debts. Grant all such other, further, and general
463 relief as to your honor seem fit and meet in the premises, and your orator will ever pray.

THOS. R. MITCHELL,
Sol. for Compl't.

$2,000.] EXHIBIT A.

Six months after date pay to the order of E. Alley, at Bank of North America, New York, two thousand dollars, with interest from date, acceptance waived, value rec'd, and charge the same to account of—

J. HOLMES AGNEW.
J. C. HASELTON.

To cashier B'k Nor. America, New York.

EXHIBIT B.

$2,000.] CHATTANOOGA, TENN., 10 *March*, 1859.

Twelve months after date pay to the order of E. Alley, at Bank of North America, New York, two thousand dollars with interest from date, acceptance waived, value received, and charge the same to account of—

J. HOMES AGNEW.
J. C. HASELTON.

To cashier B'k No. America, New York.

Pros. bond.

We, Erasmus Alley an' Thomas R. Mitchell, hereby bind our-
464 selves to pay J. Homes Agnew, James C. Haselton, & Samuel J. Agnew the sum of two hundred and fifty dollars.

The condition of the above obligation is such that whereas the said Erasmus Alley has this day filed a bill of complaint in the chancery court at Jaspar, against the said J. Homes Agnew, James C. Haselton, and Samuel J. Agnew; Now if the said Erasmus Alley shall well and truly prosecute said suit with effect, or in case of failure of such prosecution shall pay to the said J. Homes Agnew, James C. Haselton, and Sam'l J. Agnew all such costs and damages as may be awarded against him by said court, then the above obligation to be void.

Witness our hands & seals this June 28th, 1860.

ERASMUS ALLEY, [SEAL.]
By MITCHELL, *Sol.*
THOS. R. MITCHELL.

Subpœna in equity.

STATE OF TENNESSEE, *Marian County:*

To the sheriff of Marian County, greeting:

You are commanded to summons Samuel J. Agnew personally to be and appear at our next chancery court to be holden at
465 the court-house in the town of Jaspar, Marian County, Tennessee, on the second Monday of September next, to answer upon oath a bill of complaint filed in said court against J. Homes Agnew, J. C. Haselton, & Samuel J. Agnew by Erasmus Alley. Herein fail not and have you then and there this writ.

Witness D. Rankin, clerk & master of said county, at office in Jaspar, this second Monday of March, 1860.

D. RANKIN,
Clerk & Master.

On which is the following return: Came to hand July the 2d, 1860. Executed in full July the 30th, 1860.

J. H. CARROLL, *D. Sheriff.*

Rules from the rule-docket.

E. ALLEY
vs.
SAM'L J. AGNEW ET AL.

O. bill filed 30th June, 1860. Pros. bond executed, with Thos. R. Mitchell security, 30th June, 1860; sub. ad resp'd. & copy of the bill iss'd to sheriff of Marian County 30th June, 1860. Order of publication in chancery at Jasper. Erasmus Alley vs. J. Homes Agnew and James C. Haselton and Samuel J. Agnew.

It appearing that the def'ts, J. Homes Agnew & James C. Haselton, are non-residents of the State of Tennessee, so that the process
466 of the court cannot be served on them,

It is therefore ordered that publication be made weekly for four weeks in the Chattanooga Gazette, a newspaper published in the city of Chattanooga, requiring said J. Holmes Agnew and James C. Haselton to appear at a chancery court to be held in Jasper the second Monday in September next, and answer complainant's bill filed against them and Sam'l J. Agnew, or judgment by confession will be entered and the cause set for hearing ex parte. D. Rankin, C. & M. Judgment pro confesso entered at Sept. term, 1860, against all the def'ts.

Bill of cost.

E. ALLEY
vs.
S. J. AGNEW ET AL.

State tax, $3.50.

D. Rankin, C. & M.: filing bill, 25c.; taking pros. bond, 25c.; iss. sub. ad resp't, 75c.; copy of bill, 1,575 words, $1.57c.; postage, 3 c'ts; order of publication, 50c., in Chatt'a Gazette; docketing cause, 10c.; decree at Sept. term, 1860, 810 words, 81c.; bill of cost, 50c.; 1 rule on rule docket, 10c..... $4 81
J. M. Carroll, D. S., executing sub. ad resp't..... 1 00
Chattanooga Gazette..... 3 00

$8 81

467 ERASMUS ALLEY
vs.
J. HOMES AGNEW, JAMES C. HASELTON, SAM'L J. Agnew.

Be it remembered on the 12th day of September, 1860, compl't came and moved for a judgment for confessed against the defendants, that notice and publication had been made according to law, and defendants failed to appear and make defence according to law, it is considered that the said motion be made absolute. Judgment is hereby entered for confessed against said defendants; and therefore this cause came on to be heard before Chancellor Van Dyke upon the bill and exhibits thereto and said judgments for confessed, and it appearing therefrom to the satisfaction of the court that compl't sold and conveyed, on January 29th, 1859, the lands set out in the pleadings to def'ts, J. Homes Agnew and James C. Haselton, with the reservation in the pleadings for $7,500, of which sum $3,500 were paid; for the balance said two defendants on March the 10th, 1859, drew their two drafts for $2,000 each to compl's order on the cashier of the Bank of North
468 America, New York, drawing interest from date and waiving acceptance; one due at six months and the other at twelve months from date. That said drafts were duly presented and protested for non-payment, and they and interest thereon remain still due and unpaid. That said two drafts for $4,000, together and the interest thereon of $361.33=$4,361.33 now justly due compl't as balance of said purchase money; that the same is a proper lien on said land; that said J. Homes Agnew since his said *said* purchase has contracted or sold his interest in the lands to Sam'l J. Agnew, his son, with full knowledge to his vendee of said lien, and no provision has been made for securing or paying off said . It is therefore considered by the court that compl't is entitled to the relief prayed for and to enforce his vendor's lien for the satisfaction and payment of said $4,361.33 by sale of said land, and it is accordingly hereby adjudged and decreed that the C. & M., after giving forty days' notice in the Chattanooga Gazette, a newspaper published in Chattanooga, Hamilton Co.,
469 Tenn., of the time and place of sale, proved at public outcry to the highest bidder, to sell said lands at the court-house at Jasper, Marion County, Tenn., on a credit of six months, taking bond and security, bearing interest from date, and retaining a lien on the land for the purchase money; said lands being described to be sold with the reser-

vation; to wit: The northeast & northwest quarter of section 27; the southeast quarter of section 21; the northeast quarter of section 28, and the southeast quarter of section 22, all in the first fractional township and sixth range west of the basis line, in the Ocoee district; also the northwest quarter of section 2, and one-fourth of northeast quarter of section 2, in the second fractional township, sixth range west of the basis line, in the Ocoee district; also the undivided half the northwest quarter of section 1, in second fractional township, sixth range west of the basis line, in the Ocoee district, subject, however, to a lease for five years to Matthew Spencer, compl't's interest in said land being
470 conveyed by said deed; also the undivided half of the following-described tracts or parcels of land, to wit: 40 acres, being the northwest corner or fourth of the southeast quarter of section 10; the southeast quarter of section 11; the southeast quarter of section 2; the northwest fourth of the northeast quarter of section two; the northwest quarter and the remainder previously ungranted (being one hundred and twenty acres) of the northeast quarter of section ten; the northwest corner of the southeast quarter of section ten, and the remainder previously ungranted, being one hundred and twenty acres of the southwest quarter of section nine; the east half of the southeast quarter of section ten, and the northeast fractional quarter of section fifteen, being thirty-eight acres, all in the second fractional township, sixth range west of the basis line, in the Ocoee district; the right of way to and for the use and benefit of the Nashville and Chattanooga Railroad
471 Co., and also the right and privilege of getting water over, through, and on said lands were expressly reserved by the terms of said deed; all of said lands lying in Marion County, Tennessee; and on application of compl't said land is sold without the right of redemption. It is also ordered that def'ts have four months from this date to pay said sum before the sale is made. The clerk & master will report his action in the premises to the next court. All other questions reserved until said report is made.

STATE OF TENNESSEE,
Marian County:

I, David Rankin, clerk & master of the chancery court at Jasper, Tennessee, do hereby certify that the foregoing is a true & perfect transcript of the record in the case of Erasmus Alley ag'st J. Homes Agnew, James C. Haselton, & Sam'l J. Agnew, which is now on file in my office. Witness my hand & private seal, not having a seal of office, at office this 16th day of October, 1860.

D. RANKIN, *C. & M.* [SEAL.]

Proceedings in supreme court.

STATE OF TENNESSEE,
Marian County:

472 Personally appeared before me, David Rankin, clerk & master of the chancery court at Jasper, Tenn., Erasmus Alley, and made oath in due form of law that James C. Haselton, J. Homes Agnew, and Samuel J. Agnew, plaintiffs in a writ of error pending in the supreme court of Tennessee, at Knoxville, against said Alley, prosecuted from a decree of the chancery court at Jasper in a cause wherein said Alley was compl't, and said Haselton, J. Homes Agnew, and Samuel J. Agnew, were defendants, are now, and were at the date said writ was ob-

tained, citizens of the State of New York, a non-slaveholding State, within the present limits of and under the Government of the United States, and that they are now actual residents of the said State of New York; affiant is a citizen of the State of Tennessee, in the Confederate States of America.

E. ALLEY.

Sworn to in open court, 10' Sept., 1861.

D. RANKIN, *C. & M.*

STATE OF TENNESSEE:

473 Know all men by these presents that we, J. Homes Agnew, James C. Haselton, & Sam'l J. Agnew and Eli Walker are held and firmly bound unto Erasmus Alley in the sum of two hundred and fifty dollars.

The condition of the above obligation is such that whereas heretofore, to wit, on the 12th day of September, 1860, Erasmus Alley obtained a decree to secure his vendor's lien, &c., for $4,361.33, & an order of sale, &c., in the chancery court of Marian County for the sum of $4,361.33 as aforesaid and costs of suit; and whereas the said J. Homes Agnew, James C. Haselton, & Samuel J. Agnew have this day filed a certified copy of the transcript of the record of said cause from said chancery court in the clerk's office of the supreme court, at Knoxville, Tennessee, and demanded a writ of error in order that said cause may be reheard and finally determined in said supreme court:

Now, if the said J. Homes Agnew, James C. Haselton, & Sam'l J. Agnew shall effectually prosecute said writ of error in said supreme court, then this obligation to be void, or in case of failure to
474 prosecute the same, then to pay all costs and damages, and fully to comply with the judgments of said court in said cause.

Given under our hands and seals this 3d day of November, 1860.

J. HOMES AGNEW. [SEAL.]
JAS. C. HASELTON. [SEAL.]
SAM'L J. AGNEW. [SEAL.]
ELI WALKER. [SEAL.]

Notice of writ of error.

ERASMUS ALLEY
vs.
J. HOMES AGNEW ET ALS.

Issued Nov'r 8th, 1860.

Came to hand Nov. 12th, 1860.

Executed by delivering Erasmus Alley a true copy Nov. the 12, 1860.

P. M. PRYOR, *Sh'ff.*

STATE OF TENNESSEE:

To the sheriff of Marian County, greeting:

Whereas J. H. Agnew, J. C. Haselton, & S. J. Agnew have this day filed in the supreme court clerk's office for the eastern division of said State, at Knoxville, a certified transcript of the record in the case of Erasmus Alley vs. said J. Homes Agnew & others, recently determined in the chancery court of Marian County, and the said par-

475 ties having entered into bond, as required by law, and demanded a writ of error, these are therefore to command you that you notify the said Erasmus Alley thereof, and that he can attend at said court, at Knoxville, on the second Monday in September next and defend the same, if they see proper. Herein fail not; and have you then and there this writ.

Witness Carrick W. Nelson, clerk of our said court, at office in Knoxville, the second Monday in September, 1860.

C. W. NELSON, *Clerk.*

STATE OF TENNESSEE:

Supreme court at Knoxville.

I, J. F. Deaderick, cl'k of said court, do hereby certify that the foregoing are full & true copies from the records of the cause therein named, as the same appear of record in my office. Given under my hand & the seal of said court at office, in Knoxville, this 9th day of September, 1879.

[SEAL.] J. F. DEADERICK, *Clerk.*

(Endorsed:) Transcript from supreme court. Filed Sept. 10, 1879. A. R. Humes, clerk.

Deed of J. C. Haselton to Bartow Iron Co.

J. C. HASELTON *to* BARTOW IRON CO. } Deed.

For a valuable consideration I have sold and hereby convey
476 to the Bartow Iron Company, a corporation under the laws of the State of Georgia, (see acts of said State for the year, page , the southeast quarter of section three, an undivided three-fourth interest in the following: The southwest quarter of section three, the south half of the northwest quarter of section three; the north half of section eleven; the southwest fractional quarter of section eleven; and also an undivided half interest in the following: The north half of section ten; the west corner and east half of the southeast quarter of section ten, it being one hundred and ten acres; the southeast quarter of section ten; the northwest corner and the east half of the southwest quarter of section nine, being one hundred and twenty acres; all in the sixth range fractional township ten, west of the basis line of the Ocoee district, in Marion County, Tennessee, and I warrant the title against all persons whomsoever.

J. C. HASELTON.

Witness:
JAMES L. BELL.

STATE OF TENNESSEE,
Davidson County:

477 Personally appeared before me, James L. Bell, clerk of the county court of said county, the within-named J. C. Haselton, the bargainor, with whom I am personally acquainted, and who acknowl-

edged that he executed the annexed instrument for the purposes therein contained.

Witness my hand at office the 8th day of Sept., 1875.

JAMES L. BELL, *Clerk.*

Received for registration the 11th of Sept., 1875, at 6 o'clock p. m.

W. BYRNE, *Reg.*

STATE OF TENNESSEE,
Marion County:

I, D. O. Kelley, register for said county, do certify that the foregoing instrument is a full, true, and perfect copy of deed registered in book L, page 85, of my office, this 6th day of January, 1879.

D. O. KELLEY, *Reg.*

(Endorsed:) J. C. Haselton to Bartow Iron Company. Deed. Filed Sept., 10, 1879. A. R. Humes, clerk.

Proceedings in Federal court.

Be it remembered that at a circuit court of the United States began and held for the eastern district of Tennessee, at the Federal
478 court-rooms in the city of Knoxville, within the said district, and the sixth circuit, on the second Monday, it being the 14th day of July, A. D. 1879,

Present and presiding the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit, and the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

WEDNESDAY MORNING, *September 10th*, 1879.

Court met pursuant to adjournment.

Present and presiding the honorable John Baxter, judge of the United States circuit court for the sixth judicial circuit.

V. A. GASKILL & WIFE
vs.
J. C. HASELTON ET ALS. } In equity No. 651.

In this cause it is by consent of all parties agreed that since the filing of this bill H. L. Gaskill has sued for and obtained a divorce from V. A. Gaskill and has been restored to her former name of H. L. Whiteside, and that she may prosecute this suit alone in the name of H. L. Whiteside.

Decree dismissing bill & granting appeal.

H. L. WHITESIDE
vs.
J. C. HASELTON, BARTOW IRON COMPANY, R. Cravens, James Boyce. } In equity No. 651.

479 Be it remembered that this cause came on to be heard on this the 10th day of September, 1879, before the honorable John Baxter, judge of the circuit court of the United States for the sixth judicial circuit, on the bills, answers, former decrees and orders, and the

proofs, written arguments, and exhibits in the cause, from all which the court is of the opinion that complainants have not made out title to the land in controversy, and are not entitled to the relief sought. It is decreed accordingly, and complainant's bill is dismissed; and it is further decreed that respondents recover of complainants and H. L. Gaskill and C. R. Gaskill, their sureties for the prosecution of the cause, all the cost of the cause, for which execution may issue. From which complainant prays an appeal to the next term of the Supreme Court of the United States; which said appeal is granted upon complainant's giving bond in the sum of five hundred dollars to prosecute said appeal with effect; and sixty days are allowed in which to perfect said appeal by giving said bond.

Appeal bond.

480 Know all men by these presents that we, H. L. Whiteside, Hugh Whiteside, and Florence Whiteside, are held and firmly bound unto J. C. Haselton, The Bartow Iron Company, R. Cravens, James P. Boyce, James P. Boyce, executor of Ker Boyce, dec'd, in the full and just sum of five hundred dollars, to be paid to the said J. C. Haselton, The Bartow Iron Company, R. Cravens, James P. Boyce, James P. Boyce, executor of Ker Boyce, dec'd, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these prosents. Sealed with our seals and dated this 27th day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a term of the United States circuit court for the eastern district of Tennessee, held at Knoxville, in September, 1879, in a suit, in equity depending in said court between the said H. L. Whiteside, as complainant, and the said J. C. Haselton, The Bartow Iron Company, R. Cravens, James P. Boyce, James P. Boyce, execu-
481 tor of Ker Boyce, dec'd, defendants, a decree was rendered by said circuit court against the H. L. Whiteside on the 10th day of September, 1879, dismissing her bill, and decreeing the costs of the suit against her as complainant; and the said H. L. Whiteside in open court at the time said decree was pronounced against her prayed an appeal from the said decree rendered against her, the complainant, to the Supreme Court of the United States to be holden at Washington, which prayer the said appeal was granted by said court, upon condition that she, the said H. L. Whiteside, complainant, give a bond, and good security for said appeal in the sum of five hundred dollars; and she, the complainant aforesaid, was allowed sixty days from the date of said decree within which to give the said appeal bond.

Now, the condition of the above obligation is such that if the said H. L. Whiteside, complainant, shall prosecute her said appeal to
482 effect, and answer all damages and costs if she fail to make her said appeal and plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

H. L. WHITESIDE. [L. S.]
FLORENCE WHITESIDE. [L. S.]
H. W. WHITESIDE. [L. S.]

The above bond executed and acknowledged in my presence, and I

certify that the securities whose names are hereto signed are amply good and sufficient security for the am't therein named.

R. M. BARTON, JR.,
Com. of the Circuit Court U. S., Eastern District of Tennessee.

Approved by—

Approved and accepted this the 29th day of October, 1879.

JNO. BAXTER, *Judge, &c.*

(Endorsed:) No. 651. H. L. Whiteside vs. J. C. Haselton, et al. Appeal bond. Filed Nov. 3d, 1879. A. R. Humes, clerk.

483 UNITED STATES OF AMERICA,
Circuit Court, Clerk's Office
Eastern District of Tennessee, ss:

I, A. R. Humes, clerk of the court aforesaid, do hereby certify that the foregoing four hundred and eighty-two (482) pages contain a full, true, and perfect transcript of the record and proceedings had in the case in the caption mentioned, viz: V. A. Gaskill & wife, now H. L. Whiteside, versus James C. Haselton et al., No. 651, in said court.

In testimony whereof I hereto subscribe my name officially and affix the seal of said court, at Knoxville, this 24th day of March, A. D. 1880, and in the year of our Independence the 104th.

[SEAL.] A. R. HUMES, *Clerk.*

Clerk's fee for transcript, 970 folios, @ 10c. each, 97.00; certificate and seal, .50; cost of copying Exhibit A to Wm. Hall's dep'n, 2.00; total, $99.50.

Received payment from Mrs. H. L. Whiteside.

A. R. HUMES, *Clerk.*

484 $102.50c.] Received of Harriet L. Whitesides, per attorneys, DeWitt & Shepherd, one hundred & two dollars & fifty cents, amount in full of my fees for making transcript of the records of the cause determined in supreme court at Knoxville at its September term, 1879, of V. A. Gaskill & wife, Harriet L. Whiteside, vs. Badge & Eaton, Jas. C. Hazleton et al., furnished (as to me represented) under writ of error to Supreme Court of U. States, at Washington.

Given under my hand & the seal of said court this 21st October, 1880.

[SEAL.] J. F. DEADERICK, *Clerk.*

(Indorsement on cover:) No. 770. H. L. Whiteside, appellant, vs. J. C. Haselton, The Bartow Iron Company, R. Cravens, James P. Boyce, James P. Boyce, executor of Ker Boyce, deceased. E. Tennessee C. C. U. S. Filed 12th November, 1880.

BURGOYNE (Telephone No. 587), 29 Rose St.

FILED
MAR 7 1882
JAMES H. McKENNEY

110-296

Supreme Court,

OF THE UNITED STATES.

H. L. WHITESIDE,
Appellant.

vs.

JAMES C. HASELTON, THE BARTOW IRON COMPANY ET AL.,
Appellees.

No. 770, October Term, 1881.

SIR—Please take notice that, on behalf of James C. Haselton, one of the above-named appellees, I shall move this Court, at the Court Room thereof in the Capitol in the City of Washington, D. C., on the 27th day (and fourth Monday) of March, 1882, at the opening of Court on that day, or as soon thereafter as counsel can be heard, that the above entitled appeal be dismissed for want of jurisdiction, and that the said appellee may have such other and further relief as to the Court may seem proper.

Yours, &c.,
GEORGE NORRIS,
Of Counsel for J. C. Haselton,
Appellee.

To W. H. DEWITT, ESQ.,
Solicitor and Counsel for
H. L. Whiteside, Appellant.

Brief for J. C. Haselton, Appellee, on Motion to Dismiss Appeal.

Statement.

This is an appeal from a Decree of the Circuit Court of the United States for the Eastern District of Tennessee, in equity, dismissing complainants' bill with costs.

The bill was originally filed in the Chancery Court of Marion County, Tennessee, and afterwards removed to the Federal Court.

The suit was brought to obtain an account of the rents and profits of certain mining lands situate in the State of Tennessee, owned, as alleged in the bill, by the complainant H. L. Gaskill (now Mrs. H. L. Whiteside), in common with defendant Haselton, or with him and defendant, The Bartow Iron Company.

On behalf of defendant and appellee Haselton, this motion is made to dismiss the appeal for want of jurisdiction.

POINTS.

I.

By Section 692 of Revised Statutes of the United States it is provided that

"An appeal shall be allowed to the Supreme "Court from all final decrees of any Circuit Court, "or of any District Court acting as a Circuit Court, "in cases of equity, and of admiralty and maritime "jurisdiction, where the matter in dispute, exclu- "sive of costs, exceeds the sum or value of two "thousand dollars."

By section 3 of an Act approved February 16th, 1875, and entitled "an Act to facilitate the disposi-

tion of causes in the Supreme Court of the United States, and for other purposes," it is provided:

"That whenever, by the laws now in force, it is "required that the matter in dispute shall exceed "the sum or value of two thousand dollars, exclu- "sive of costs, in order that the judgments and de- "crees of the Circuit Courts of the United States "may be re examined in the Supreme Court, such "judgments and decrees hereafter rendered shall not "be re-examined in the Supreme Court, unless the "matter in dispute shall exceed the sum or value "of five thousand dollars, exclusive of costs."

II.

The matter in dispute in this action does not exceed the sum or value of five thousand dollars, exclusive of costs.

1. The bill was filed to recover rents and profits of certain mining lands in the State of Tennessee, alleged to be due and owing from defendant, Haselton, or the Bartow Iron Company, or both, to the complainants, in right of Harriet L. Gaskill.

The bill alleges that complainants, in right of H. L. Gaskill, are the owners in fee of an undivided half interest in said lands, describing them (folios 4 and 5 of transcript); that the other interests in said lands are owned by defendant Haselton or the Bartow Iron Company; that upon said lands are situated the Vulcan Coal Mines (fol. 6); that Haselton and the Bartow Iron Company have been using and operating said mines from the 1st of June, 1875, and "*have never accounted for or paid to complainants* "*rent for said premises*" (fol 7); that "*the rents or* "*net proceeds of said mine,*" since June 1st, 1875, *are* "*or should be the sum of five thousand dollars, one-* "*half of which belongs to complainants in the right*

" *of said H. L. Gaskill;*" that complainants, under this bill, "*only claim an account and payment of* " *one-half the rents or income from said property* " (fol. 8); that complainants have an equitable lien on Haselton's interest in said lands, and in the machinery, fixtures and tools thereon, or connected therewith, or used in operating said mines; and that said lien should be declared and enforced for the purpose and to the extent necessary to pay and satisfy whatever amount may be decreed against defendants, " on account of *rents and profits arising from the use of said property and mines*" (fol. 11); that complainants have demanded " *an account, settlement* "*and payment of rents* " from the defendants, but that the same has been refused (fol. 12).

The prayer for relief is that Haselton and The Bartow Iron Company may be enjoined from selling or transferring their interest in said lands, machinery, fixtures, tools, &c., and that an attachment may issue against all said property and against the individual property of Hazelton and said company, " *so far as the same may be necessary to satisfy com-* " *plainants' demand, debt, interest and all costs of* " *this litigation*" (fol. 13); that an account be ordered and taken of all *rents* received by defendants from any houses, cleared lands, &c. * * * * * " and that a final decree be entered in their (com- " plainants') favor *for the same,* with all proper in- " terest and costs" (fol. 14); that a sale of all the property attached be had, or of "so much thereof " as may be necessary to satisfy complainants' *de-* " *cree for debt, interest* and costs" (fol. 14).

Complainants do, indeed, pray that a partition of said lands and Vulcan mines be had (fol. 15), but this is the only allusion in the bill to the subject of partition, and not a particle of evidence was given regarding the relative positions and values of the several parcels composing the entire tract—absolutely no evidence appropriate to an action for partition, or calculated to inform the Court as to the

propriety and feasibility of making partition in kind.

The entire framework of the bill, as well as the general scope and direction of the evidence show, almost beyond possibility of question, that the subject of controversy—"the matter in dispute"—was simply the rents and profits of the premises, alleged to have accrued since June 1st, 1875.

2. The maximum amount of rents and profits claimed, and so explicitly stated in folio 8 of the bill, was twenty-five hundred dollars, with interest to be computed from no specified dates, but from no date prior to June 1st, 1875.

3. That this ~~will~~ was well understood both by the Chancery Court and by the parties to be the sum or value of the matter in dispute is clearly shown by the terms of the Fiat of the Chancellor (page 6, of transcript) ordering an attachment and injunction as prayed, "on complainants executing attachment and injunc- "tion bond *in double the amount of complainants'* "*demand as set forth in the foregoing bill.* The "bond will be in $5,000."

4. Complainants' demand as above stated, with interest, could not by any possible computation amount to five thousand dollars.

5. Nor can the sum or value of the matter in dispute be swelled by the fact that defendant Haselton in his separate answer undertook to allege, by way of cross-bill, a claim against complainant H. L. Gaskill for rents of certain portions of said lands; for the reason that said answer, in so far as it was made a cross-bill, was dismissed and stricken out on the demurrer of complainants (folio 106, page 39).

III.

Even if the view should be taken that this was an action for the partition of the lands in question, as well as for

rents and profits, there is nothing to show that the value of the matter in dispute is in excess of five thousand dollars.

1. There is no allegation in the bill as to the value of said lands, except the very vague statement, in folio 6, that upon said lands are situated the Vulcan coal mines, "which are of very great value."

2. There is absolutely no evidence as to the value of said lands, either at the time of filing the bill, or at any subsequent time.

The only evidence touching their value at any time, is some testimony as to what had been paid for them, or portions of them, years before the bringing of this suit, the latest date referred to being the spring of 1867. Mr. Haselton testifies, however (fol. 95), that the value of the land is [illegible]

* Partition of these lands, if decreed, would be a matter wholly between Mrs. Gaskill and the Bartow Iron Co., Haselton having sold said lands to said Company in September, 1875.

See folios 6, 65, 476 of Transcript.

This appeal should be dismissed as to defendant Haselton, with costs.

George Norris

GEORGE NORRIS,
Of Counsel for J. C. Haselton, Appellee.

110-296

OFFICE SUPREME COURT U.S.
FILED
MAR 25 1882
JAMES H. M...

The Supreme Court

OF THE

UNITED STATES.

H. L. WHITESIDE,
Appellant,
vs.
JAMES C. HASELTON,
THE BARTOW IRON COMPANY ET AL.,
Appellees.

No. 770, October Term, 1881.

BRIEF

for H. L. Whiteside, Appellant.

REPLY

to Motion made in behalf of Haselton, Appellee, to dismiss Appeal.

DEWITT & SHEPHERD,
of Counsel for Mrs. H. L. Whiteside,
Appellant.

ADOLPH S. OCHS & CO., Printers and Binders, Chattanooga.

The Supreme Court

—OF THE—

UNITED STATES.

H. L. WHITESIDE,
Appellant,
vs.
JAMES C. HASELTON,
THE BARTOW IRON COMPANY ET AL.,
Appellees.

No. 770, October Term, 1881

BRIEF

for H. L. Whiteside, Appellant.

REPLY

to Motion made in behalf of Haselton, Appellee, to dismiss Appeal.

DEWITT & SHEPHERD,
of Counsel for Mrs. H. L. Whiteside,
Appellant.

ADOLPH S. OCHS & Co., Printers and Binders, Chattanooga.

Brief for Mrs. H. L. Whiteside, Appellant, against Motion to Dismiss Appeal.

STATEMENT.

This suit was brought to recover $2,500.00 of the *rents and profits* arising from certain coal mine lands, and also for a *partition* of the lands and coal mines described in the bill, *between complainant* and defendant, *J. C. Haselton* as *tenants in common*, or, if that could not be done, then, to obtain a decree for the sale thereof, for a distribution of the proceeds amongst those entitled, &c.

The Vulcan Coal Mines are situated mainly, if not entirely, on what is called the *S. E. ¼ of Sec.* 3 of said lands, and *these mines* constitute the *chief value of the whole.* Haselton and the Bartow Iron Company plead and answer and deny complainant's title to the lands; especially, do they *dispute* and *put in issue her title* to the said *S. E. ¼ of Sec.* 3, and the coal mines, as well as several other sections of the lands; and deny her right to any interest in the machinery, &c., used in operating the mines, and deny her right to recover any rents. Hence, *to find* the *sum* of the *jurisdictional value*, we must *add* to the $2,500.00 rents sued for, the *values* of *complainant's interest in all the lands sought to be partitioned*, or in any view the value of her interest in the *Vulcan Mines, land and machinery, title to which is disputed.*

POINTS.

1. The motion made in this case to dismiss the appeal as to J. C. Haselton, appellee, on the ground that it does not appear that the matter in dispute exceeds the value of $5,000.00 is untenable, for the following facts and reasons:

I.—THE TITLE.

"Complainants allege that they are the owners in fee "of one-half undivided interest in the following real es- "tate, (then follows a description of the land) including "the *S. E. ¼ of Sec.* 3, charging that the other interests in "the lands are owned by defendant, J. C. Haselton * * * or it may be now *claimed* by the "Bartow Iron Company, by transfer from Haselton. "That upon said lands are situated what is known and "called the Vulcan Coal Mines, and which are of very "great value," (folios 4, 5, 6). "That complainants and "Haselton are tenants in common, owning equal interest "in said lands and mines and property, with the qualifica- "tion that said defendant, Bartow Iron Company *claims* "some part or portion of Haselton's interest, &c. * * (folio 12); that, (folio 11) the defendants "have an interest to the extent of one-half in all the "machinery, tools, &c. * * * used in ope- "rating the mines."

2. Haselton's answer says:

"Complainants, description and alleged ownerships are "inaccurate and can not be relied on, (fol. 6); then "follows his version of the titles, folios 61, 62, 63, 64."

He admits in substance, (fol. 73), that the mines in controversy are on said S. E. ¼ of Sec. 3, of said lands.

He says, (fol. 64), he "was the owner of the same "*in fee* at the time that he sold to the Bartow Iron Company."

"(Fol. 64); he says she (complainant) did not pur- "chase the N. E. and N. W. ¼s of Sec. 27, the S. E. ¼ of "Sec. 21; the ¼ of the N. E. ¼ of Sec. 2, in the fraction- "al township mentioned, nor the undivided half interest "in the N. W. ¼ of the S. E. ¼ of Sec. 10, nor in *the S. E.* "¼ *of Sec.* 3, in said fractional township."

In his deposition, (fol. 220), he *claims ownership* to said *S. E. ¼ of Sec.* 3, and says his sale to the Bartow

Iron Company, of Georgia, ended all his interest in that section. "*except as a stockholder* in *the Bartow Iron Company.*"

3. The Bartow Iron Company, (folios 46, 47), denies complainant's title, and (fol. 48), undertakes to put in the *plea* of *innocent purchaser.*

4. *Decree* dismissing bill and granting appeal, says, (fol. 479), * * * * the court is of the opinion that complainants have not made out titles "to the land in controversey, and are not entitled to the "relief sought." * * *

5. Thus it will be seen that complainant's *title* to an *undivided* half of the *Vulcan Coal Mines*, the said *S. E. ¼ of Sec.* 3, and several other sections of said lands, as well, of course, as her right to any of the machinery or other improvements upon the mines, and coal, rents arising therefrom was squarely denied and put in issue by Haselton and the Bartow Iron Company, and her bill was dismissed in the court below on that point *only.*

II.—VALUE

Of property, title to which is disputed.

Haselton, in his sworn answer and cross bill, says: (folios 70-71), the sale of these same lands by Alley to him and one Agnew, in 1859, was for $7,500.00. In his sworn deposition, $5,350.00, (fol. 216), is the sum bid by complainant for the land she bought at the Supreme Court sale. Same in his answer, (fol. 71).

Alley proves that she bid $5,500.00 at the Court sale, (see folios 378-379).

The Supreme Court decree divesting and investing title in complainant shows she paid $5,500.00, (see folios 327-328).

And she swears to the same herself, fol.

The sworn bill of complainant, (fol. 6), says:

"The Vulcan Coal Mines are of very great value."

Haselton, in his deposition, in speaking, comparatively, of penitentiary convict labor and free labor, (fol. 249), says: * * * "With free labor "at all, the *Mine* would probably now be of *comparatively great value.*

The following admissions are also in his deposition: "The Bartow Iron Company have issued bonds and "mortgaged in the State of Tennessee on surety," (see fol. 244).

Interrogatory 18. *On cross-examination*, (fol. 245). "How many bonds did the Bartow Iron Company have "a right to issue—state your best information, both as "to number and amount—on property in Tennessee? "Answer. Fifty thousand dollars, and, I think in one "thousand dollar bonds; but may have been part five hundred dollar bonds," (folios 245-246). Again, "The "improvements put on the property, (speaking of Vul- "can Mines), cost a *large amount.*" (See fol. 250).

When pressed to state the value of the Vulcan Mine property, he fails to give it other than as above stated. See interrogatory 26, and answer, (fol. 251.)

The Vulcan Mines were the principal property of value purchased by complainant. See sworn statement of complainant, (fol. 288).

Again,

Haselton, in his deposition, admits that he was a party defendant to the suit of Gaskill and wife, vs. Badge and Eaton, et als. in the Chancery Court of Hamilton county, Tennessee, answered and made defence—and appealed to the Supreme Court of Tennessee, at Knoxville, (fol. 229).

The parties agreed to the *fact* of that suit, and the appeal, and that the case had not been decided by said Supreme Court, on September 4th, 1879 (folios 319-320).

That case was subsequently tried, and is reported in 3 Lea, Tennessee Reports 144, et seq; and is here referred to for no other purpose, *at present*, than to show, that *there*, as *here*, the *title* to the said *S. E.* ¼ of *Sec.* 3, and Vulcan Coal Mines was in controversy; that the Court in that case say: " * * * The "Vulcan Coal Mines, * * * constitute the "chief value of the whole." 3 Lea, p. 146; that: "The lands were sold, including the S. E. ¼ of Sec. 3, on "which the Vulcan Coal Mines had been opened." See 3 Lea, 146.

The Transcript, (not yet printed), of the record of that case from said Supreme Court, was filed in this court, with the transcript of the present case. And, if necessary to support the above statements of value, we beg leave of this court, to be allowed time to print that transcript, and make appropriate references to the same on the question of value.

Haselton can not escape from this controversy, on this motion, on the ground that he has undertaken to sell and convey to the Bartow Iron Company. It is a sufficient answer that he was not content to sell his own interest, but he also undertakes to sell and convey complainant's interest in said Vulcan Mines, Machinery, &c., the S. E. ¼ of Sec. 3, and other sections, (folios 60-61; 476).

Further, it is admitted that the "Bartow Iron "Company was a corporation *solely* by virtue of the "laws of Georgia," (fol. 59). See also, Haselton's deed to said Company, (fol. 476).

Just here, a *material* question on the *merits* arises, which can not be disposed of on this motion, namely: whether in view of the facts appearing in the record the Bartow Iron Company, of the State of Georgia, can purchase and take title to lands in Tennessee; and if it can, whether the deed of Haselton has been effectual to put complainant's title beyond her right of recovery

by the act of Haselton. His presence as a party to the record is necessary to the settlement of the questions arising on *her* title which *he* has endeavored to convey.

He admits his Presidency of the Company, and his ownership of stocks in it, (folios 64-65).

Now, if, as stated by the Supreme Court of Tennessee, the S. E. ¼ of Sec. 3, on which the Vulcan Mines are situated, constitute the *chief value* of *the whole* of complainant's purchase, she having given $5,500.00 for all she purchased, would make *more* than $2,500.00, to be added to the $2,500.00 rents sued for; thus the jurisdictional sum is obtained when we look *alone* to the property, the title to which is in issue.

III.—PARTITION.

Bill charges that,

1. "*Complainants* and said *Haselton* are *tenants* in "*common*, owning equal interest in said land and mines "and property, with the qualification that said defen- "dant, Bartow Iron Company, *claims* some part or portion "of Haselton's interest in common with him, under "some contract, &c., with him (fol. 12). That all such "titles and interests as other parties had in said lands, "&c., * * * have long since been acquired "by Haselton, and he let in possession, &c.," (fol. 12).

2. Haselton, in his answer, admits the latter allegation by showing his purchase of the interests of Boyce & Cravens, and of the Whiteside estate (folios 64, 70, 71, 72).

He goes on, however, to claim the entire ownership of N. E. and N. W. ¼s of Sec. 27, the S. E. ¼ of Sec. 21, the ¼ of the N. E. ¼ of Sec. 2, in the fractional township mentioned, nor the undivided one-half interest in the N. W. ¼ of the S. E. ¼ of Sec. 10, and the *S. E. ¼ of Sec.* 3, by denying complainant's purchase thereof (fol. 64).

3. The bill, (fol. 15), * * prays that a "partition of said lands and Vulcan Mines be had in kind, "or if that can not be done, then let a sale thereof be "had and the proceeds distributed amongst those enti- "tled, &c., &c."

The bill contains all that the Statute Laws of Tennessee require to give the right to a decree of *partition*, or *of sale* in such cases.

4. So far as necessary to be noticed on this motion, the following is the law of Tennessee on the subject of *partition*, or sale *for division* of lands among tenants in common, *which is a matter of right*..

CODE. (T. & S.)

Sec. 3,270. The bill or petition shall set forth as far as known, the names of the owners, their residence, which of them are infants or married women and to whom married; describe the property, its situation, the title by which it is held and possessed, and such other facts as may be deemed necessary, and pray the court to cause it to be divided amongst the claimants according to their respective rights and titles.

SALE.

3,293. Any person entitled to a partition of premises under the foregoing provisions, is equally entitled to have such premises sold for division, in the following cases:

1. If the premises are so situated that partition thereof can not be made.

2. When the premises are of such description that it would be manifestly for the advantage of the parties that the same should be sold instead of partitioned.

NOTE—The original acts of 1827 and 1829, drawn into the Code in the above section, were interpreted in Helm vs. Franklin, 5 Hum. 404. *A tenant in common is*

entitled as a matter of right, to partition, and whenever partition can not be made without serious injury, he is entitled to sale, in order to effect a partition without injury.

5. Therefore, we look to the value of all the lands purchased by Haselton and Agnew from Alley, or at least to the value given for the same lands purchased by complainant at court sale, when we see Haselton and Agnew agreed to pay $7,500.00, (fol. 70).

The complainant paid $5,500.00, (fol. 328).

We have the above sums respectively, when we include all the property without regard to whether the title is disputed or not.

4—Points in Decided Cases.

1. The objection to the jurisdiction of this court, for the facts stated is untenable. May vs. Sloan, 101 U. S. Reports, (11 Ott.) 232.

2. If the record does not, itself, show in express terms, it does show by fair implication that the *value* of the property in controversey reaches and surpasses the jurisdictional sum which is sufficient.

Whitesitt vs. Railroad Company, 103 U. S. Report, (13 Ott.) 770.

3. If on examination of the whole record it appears that the value of the matter in dispute between the parties is equal to the jurisdictional amount, the case will not be dismissed.

Tintsman vs. National Bank, 100 U. S. Report (100 Ott.) p. 6.

IV.

If the foregoing is not sufficient for us, then we respectfully ask leave of the Court for a reasonable time to procure affidavits as to the value of the matter in dispute.

4. In the Grace Girdler case, the court said: "And "it is the practice of this court in proper cases, when it "is claimed that the value in controversy gives jurisdic- "tion, to allow an opportunity to make proof of the "fact." 6 Wall, 442.

In Rush vs. Parker, 5 Cranch, 287, it was said:

"This court will give time to procure affidavits as "to the value of the matter in dispute."

And,

"Where the demand is not for money, and the nature "of the action does not require the value of the "thing demanded to be stated in the declaration, the "practice of this court is, to allow the value to be "given in evidence." *Ex parte* Martha Bradstreet. 7 Pet. 634.

By this rule, the value of the ($2,500.00) coal rents sued for cannot be increased by affidavit; but the value of all the lands and Vulcan Coal Mines, &c., may be shown.

We beg leave to refer to the printed copy of an affidavit of the Appellant; and to printed copy of the affidavit of R. L. Watkins, and official certificate of Clerk, &c., hereto annexed, as to the question of the value of the lands and coal mines in controversy. The originals will be filed by leave of the court.

V.

We think it sufficiently appears that the case is within the jurisdiction of this Honorable Court; and that the Motion to *dismiss* the Appeal should be overruled.

WM. H. DEWHITT

and LEWIS SHEPHERD,

Of Counsel for Mrs. L. H. Whiteside, Appellant.

No. 1.

AFFIDAVITS

SUPREME COURT OF THE UNITED STATES.

No. 770.

H. L. WHITESIDE, Appellant,

vs.

J. C. HASELTON, the Bartow Iron Company et als.

I, the undersigned, H. L. Whiteside, do swear that I am a citizen of Hamilton county, Tennessee, and I am the complainant in the above entitled cause, which is pending in said Supreme Court, by appeal from the Circuit Court of the United States for the Eastern District of Tennessee. And I further state and swear to the best of my knowledge and belief, my one-half undivided interest in the Vulcan Coal Mines and lands on which they are situated and connected therewith, *title* to which is in issue and controversy in said suit, is worth more than five thousand dollars, and was worth largely more than this sum when this suit was brought in August, 1877. The $2,500.00 coal rents and profits sued for is not intended to be included in my above estimated value of the mines and lands in dispute at over $5,000.00.

A *printed* copy of the Transcript of the record of the case, No. 770, is now before me, and is here referred to for greater certainty of the description of the mines and property in controversy.

H. L. WHITESIDE.

Sworn to and subscribed before me, A. R. Humes, Clerk of the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee, at Chattanooga, March 22nd, A. D., 1882.

A. R. HUMES, CLERK,
By C. W. VINSON, DEP'T CLERK.

No. 2.

I, the undersigned, R. L. Watkins, do make oath that I am forty-six years old, a citizen of Hamilton county, Tennesse, and I am acquainted with the parties to the suit, case No. 770; H. L. Whiteside, appellant against J. C. Haselton, the Bartow Iron Company et als. pending by appeal in the Supreme Court of the United States. I know the property, the Vulcan Coal Mines and lands in controversy in said suit. and I am of the opinion that the one-half undivided interest claimed by said appellant, Mrs. H. L. Whiteside, in said property, is worth over five thousand dollars, and was worth more than this sum when the suit was brought in August, 1877, in addition to the coal rent of $2,500.00 sued for in the case. I am not interested in the event of the suit in any pecuniary way.

I refer to the *printed* copy of the transcript of the record of the case for greater certainty of description of property in dispute.

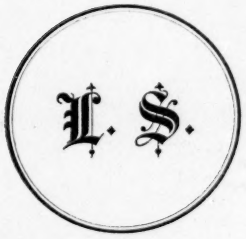
R. L. WATKINS.

Sworn to and subscribed before me, A. R. Humes, Clerk of the United States Circuit Court for the Southern Division of the Eastern District of Tennessee, at Chattanooga, March 22d, A. D., 1882.

A. R. HUMES, CLERK.
By C. W. VINSON, DEP'T CLERK.

I, C. W. Vinson. Deputy Clerk of the United States Circuit Court for the Southern division of the Eastern District of Tennessee, certify that I am personally acquainted with Mrs. H. L. Whiteside, and R. L. Watkins, the makers of the foregoing affidavits, and with their general character, and that I believe they are entitled to full faith and credit on their oaths in a court of justice. This March 22d, 1882.

C. W. VINSON, DEP'Y CLERK.



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THE SUPREME COURT

—OF THE—

UNITED STATES.

H. L. WHITESIDE,
APPELLANT,
VS.
JAMES C. HASELTON,
THE BARTOW IRON CO., *et al.*
APPELLEES.

IN EQUITY.
No. 200
OCTOBER TERM, 1883.

BRIEF

—FOR—

H. L. WHITESIDE, Appellant.

DeWITT & SHEPHERD,
OF COUNSEL FOR MRS. H. L. WHITESIDE, APPELLANT.

TIMES PRINTING COMPANY, CHATTANOOGA.

THE SUPREME COURT

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No. 200
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BRIEF

—FOR—

H. L. WHITESIDE, Appellant.

DeWITT & SHEPHERD,
OF COUNSEL FOR MRS. H. L. WHITESIDE, APPELLANT.

STATEMENT OF THE CASE.

The chief matter of contest in this suit is, whether the complainant, Mrs. H. L. Whiteside, or the defendant, James C. Haselton, or defendant, Bartow Iron Company, claiming under him, has the superior right or title to the one-half undivided interest of certain land called the "*south-east quarter of section three*," on which the Vulcan Coal Mines are situated, in East Tennessee.

On the 5th of December, 1874, complainant filed her bill, in the Chancery Court, at Chattanooga, against said Haselton, Badge & Eaton, et. als., to obtain an account of the rents and profits then due her, arising from her undivided one-half interest in these mining lands.

On the 8th of August, 1877, she brought another suit, in the Chancery Court of Marion County, Tennessee, against said Haselton, the Bartow Iron Company, et. al., to recover $2,500 00 of the rents and profits arising from these mines; and also, for a *partition* of the lands and coal mines described in the bill, between complainant and defendants, Haselton and the Bartow Iron Company. It is alleged that complainant owned an undivded half interest therein, and that defendant Haselton owned the other half, as *tenants in common*, with the qualification, that the Bartow Iron Company claimed some part of Haselton's interest *in common* with him, under some arrangement between them.

In the *former* suit, Haselton and Badge & Eaton undertook to set up *title* in Haselton to the *whole* of the S. E. ¼ of Section 3, on which the mines were situated, *against* the *right* of complainant to recover rents and profits arising on her *undivided half* interest therein.

In the *latter* suit, defendants, Haselton and the Bartow Iron Company, seek to ~~resist~~ * resist the right of complainant to recover *rents and profits*, and to have a *partition* of the *lands* and *mines*, upon the *assumption* that Haselton as owner in fee of *all* of S. E. ¼ of Sec. 3, did, on the 8th of September, 1875, sell and con-

vey the same by deed to defendant, Bartow Iron Company. And the Bartow Iron Company answered, and endeavors to *plead* and shield itself under the idea that it was an *innocent purchaser* from Haselton.

Haselton owned an interest in the Bartow Iron Company, and about that time became its President.

In the *first* suit, the *contest*, as to complainant's *right* or *title* to an *undivided half* interest in the S. E. ¼ of Sec. 3, was between H. L. Whiteside, on the one side, and defendant, Haselton, on the other side.

In the *last* suit, it is between complainant, H. L. Whiteside, on one side, and defendants, Haselton and the Bartow Iron Company, on the other side. It was never *plead* or insisted that any of the other parties to either of these suits, had any right or title in the *S. E. ¼ of Sec. 3.*

On this account, none of the other parties need be further noticed.

Both parties claim under or through one Erasmus Alley, and the claim of title, therefore, need not be traced back further than to him. When these suits were brought, complainant, H. L. Whiteside, was the wife of one V. A. Gaskill, and the suits were brought in their joint names as husband and wife. Subsequently, she sued her husband, and recovered a decree for a divorce from him, and was restored to her former name, H. L. Whiteside, and is permitted to prosecute the present suit in this name.

The *last* suit brought was *removed* from the Chancery Court of Marion County, Tennessee, to the Fedral Court at Knoxville.

In September, 1879, *that Court decided that complainant, H. L. Whiteside, had not made out title to the land in controversy, and was not entitled to the relief sought, dismissing her bill with costs. From this decree, she has appealed to this Court.*

The *former* suit *remained in the State Courts.* The Chancery Court pronounced a decree in favor of complainant, H. L. Whiteside, (or V. A. Gaskill and wife). Upon an appeal to the

Supreme Court of Tennessee, at Knoxville, at its September Term, 1879, that Court decided that *complainant*, H. L. Whiteside's (V. A. Gaskill and wife) *claim* or *title* to an *undivided half interest in the S. E. ¼ of Sec.* 3, was *superior* to the opposing claim thereto of defendant, J. C. Haselton, and pronounced a decree in her favor.

This *decision* is reported in 3, B. J. Lea, (Tenn. Rep.) 144, et. seq., under the style of V. A. Gaskill and wife vs. Badge & Eaton, et. al. The Supreme Court of Tennessee, however, decided *that* case *subsequently*, in point of time, to the decision made by the Circuit Court of the United States, in the case now pending in this Court.

Upon the question of title, to the S. E. ¼ of Sec. 3, substantially, the same issues are made, and the same proofs are presented in both suits, between Mrs. Whiteside, on one side, and Mr. Haselton on the other, with the simple addition that defendant Bartow Iron Company, claims to have purchased it *all* from Haselton. The transcript of the entire record of the case decided by the Supreme Court of Tennessee, is herewith presented to the Court.

The bill, answers, and certain proofs, used in that case, were, by agreement of parties, made and used as proof on the trial of the case before the Federal Court. So, the *identity* of the two suits will sufficiently appear in the *printed record* of the case now before this Honorable Court.

It is, perhaps, not necessary to state that Haselton, in 1872, brought two suits, one in a court of law, the other in a court of equity, against Mrs. H. L. Whiteside, (then Gaskill) et. als., to recover the S. E. ¼ of Sec. 3, which were dismissed by plaintiff Haselton. See Print, 107, 108.

TITLE.

If a statement of the case, as to the *condition* of the *title* to the land in controversy, is *necessary*, after what has already been stated, the following is deemed sufficient:

Erasmus Alley sold, and on the 7th of January, 1859, con-

veyed to one Agnew and defendant Haselton, a half interest in certain lands, in Marion County, described in the deed.

March 10, 1859, this deed was probated for registration, and registered thereafter. The deed conveyed a number of tracts of mountain land, amongst others, "the S. E. quarter of Section 3," which is one of the *chief* matters of *contest* in this suit. This deed was *registered incorrectly* in two particulars: first, it is made to bear date of January 29th, 1859, and instead of mentioning "the South East quarter of Section 3," *as registered*, it purports to convey the "South East quarter of Section Eleven." In all other respects the deed as executed, and the registered deed, are alike, the numerous tracts conveyed being the same.

Agnew and Haselton paid down $3,500 00, and executed their notes for $4,000 00.

These notes not having been paid at maturity, Alley filed his bill to enforce *his lien* for unpaid purchase money, and obtained a decree for the sale of the lands. But as the bill was filed *after* the deed was *first* and *incorrectly* registered, and *before* the *second* and *correct* registration, the land was described as *described* in *a copy* of the deed taken from the Register's office.

Haselton and Agnew appealed to the Supreme Court, where, in 1866, the decree below was affirmed, and the lands ordered to be sold for the payment of the purchase money, about $5,900 00 still remaining due and unpaid. In the decree ordering the sale, the lands are described as in the deed as *first* registered, and it is added, "being the same lands conveyed by complainant to defendants by deed of January 29, 1859." The lands were sold, including the "S. E. ¼ of Sec. 3," on which the Vulcan Coal Mine had been opened, and which *constituted the chief value of the whole*. The complainant, Mrs. Whiteside, *then* became the purchaser at $5,500 00, and the sale was confirmed in 1867, and a writ of possession awarded.

In December, 1867, Badge & Eaton, being in possession as tenants of Haselton, the complainant procured a writ of possession to issue to the sheriff, and under it they were about to

dispossess said Badge & Eaton, who were then operating the Vulcan Mine, when *they attorned* to her, and agreed to pay her the rents of the mine. They continued in possession, under this verbal agreement, paying rent to complainant, till June 1, 1870, when they entered into a written contract with her, agreeing, among other things, to pay twenty-five cents a ton for all coal mined, and to pay at this rate for 500 tons every month, whether they mined that much or not; and this contract was for five years, with the privilege to Badge & Eaton to continue it ten years. *After* her purchase, *complainant* claimed a *half interest* in the *mines* and *lands*, as purchaser, and as executrix of her late husband, Whiteside, an additional one-eighth, the residue being *then* owned by Boyce and Cravens.

It seems that the deed of Alley stood uncorrected, and as at first registered, until 1872, when it was *correctly* registered; all the parties in interest knowing, or assuming, that Alley's deed conveyed the Vulcan Mine, (located on the S. E. ¼ of Sec. 3), and that the land was *correctly* described in said deed, and *correctly registered*, until in 1870, complainant, having an offer to purchase said Vulcan Mines, caused her counsel to make an examination into the title, etc., when it was discovered that Alley's deed, *as registered*, did not include the "*S. E. ¼ of Sec. 3*," and in April of that year, 1870, she procured a deed to herself from Alley, for this quarter section, (she *being then in possession thereof*) which was registered on the same day. Haselton and Agnew were citizens of New York, and perhaps did not discover the mistake in the registration of Alley's deed to them, until Haselton visited the Ætna Mines, in which he had an interest, and which are near the Vulcan Mines, in October, 1872. Then, *he* had the deed *again registered*, in which the *S. E. ¼ of Sec. 3, appeareth*, instead of S.E. ¼ of Sec. 11, erroneously copied in the first registration of 1859.

Mrs. Whiteside's bid for the land, at the sale under the decree of the Supreme Court, was not, by several hundred dollars, the full amount of the decree in favor of Alley for his unpaid purchase money.

In 1873, Haselton procured a conveyance from the heirs

of Agnew; and, in 1875, or thereabouts, upon an *execution* issued from the Supreme Court for the *balance* of *unpaid purchase money* due Alley, the *S. E. ¼ of Sec. 3* was sold, and Haselton became the purchaser.

The deed of Alley, and the decrees of the Supreme Court, ordering and confirming the sale, reserve to the Nashville & Chattanooga R. R. Co. certain *water* privileges on the land sold and ordered to be sold. The *water* to which such privileges are reserved is said by one witness not to be on the S. E. ¼ of Sec. 3, but five or six yards on the outside of it; but the *weight* of evidence shows that the *water is upon the said quarter section.*

The $5,500.00, paid by Mrs. Whiteside for this land, was for, and applied to, that much of the purchase money which Haselton himself owed with Agnew to Erasmus Alley. Whatever purchase money Haselton may have paid on his purchase at execution sale was but paying a part of the balance of the purchase money due from him and Agnew to Alley.

At the time Haselton procured a conveyance from the heirs of Agnew, Mrs. Whiteside was in the *adverse* possession of the land, to-wit, in the year 1873. Indeed, the complainant, from and after Dec., 1867, when Badge & Eaton took under her, as lessees, has most of the time, *in fact*, and all the time in a *legal sense*, held the *adverse* possession of the interest. The fact that Badge & Eaton were procured by Haselton, in or about July, 1875, to *attorn* to him, cannot effect complainant's right, Badge & Eaton having had no right to dispute the title of their lessor, Mrs. Whiteside, in favor of Haselton, while in possession under their lease.

In 1874, *before* the last bill was filed, Haselton became the owner, as purchaser, of the ⅜ interest of Boyce & Cravens, and the ⅛ interest of the Whiteside estate in the S. E. ¼ of Sec. 3.

It does not appear that he had paid all the purchase money to Boyce & Cravens.

It *was in this way* he became a *tenant in common* with Mrs. Whiteside in the Vulcan Coal Mines, on S. E. ¼ of Sec. 3.

The *only* difference between the case decided by the Supreme Court of Tennessee, and the case now to be decided

by this Honorable Court, lies in the fact that the Bartow Iron Co., a *foreign* corporation, chartered by an act of the Legislature of the State of Georgia, claims to be an *innocent purchaser* from Haselton.

The *plea* of *innocent purchaser* made by the Bartow Iron Co., has no sufficient proof in the record to sustain *all* of its *essential* elements.

While the complainant treats it as a *foreign* corporation, there is nothing in the record to *estop* complainant from denying *its power* to purchase and own lands in Tennessee, and it does not appear in evidence that it can.

It is not denied that complainant can recover rents, if she establishes her claim or title to the one-half undivided interest in the S. E. ¼ of Sec. 3.

ASSIGNMENT OF ERRORS.

1. The Court below *erred in deciding that complainant had made out no title to an undivided half interest in the S. E. ¼ of Sec. 3, and the Coal Mines, and dismissing her bill.* (See Print 172, 173.

2. The Court should have decreed the *title* in favor of the complainant, as against Haselton and the Bartow Iron Company.

3. And should have granted a decree for *rents and profits.*

4. The Court ought to have pronounced a decree for a *partition* of the lands, between complainant and said defendants, as *tenants in common*, or for a *sale* thereof for *division*, if *partition* could not be made.

BRIEF OF THE ARGUMENT.

FOREIGN CORPORATION.

The Bartow Iron Company, a foreign corporation, chartered under the law of Georgia, could not purchase and hold land in Tennessee, unless its charter conferred such power. (There is no evidence in the record, by its charter, or otherwise, that it had such power.)

See Talmadge vs. The N. A. Coal and Trans. Co., 3 Head., (Tenn. Rep.) 339, et. seq.; Cowell vs. S. Co., 100 U. S. Rep. 55; 10 Pet. (U. S. Rep.) 519. See deed of J. C. Haselton to the Bartow Iron Co., folio 476. (Print 171.)

PLEA OF INNOCENT PURCHASER.

The, *so called, plea of innocent purchaser*, of the Bartow Iron Company, does not state the *consideration* paid by it to Haselton for the land. Folio 48, 49. (Print 19.)

On this account, the plea, itself, is insufficient. Boone vs. Chiles, 10 Pet. 211. (Curtis' Ed., top page 73.)

The *plea of innocent purchaser*, sets up matter not in the bill; a new case is presented, not responsive to the bill, but one founded on a right and title operating, if made out, to bar and avoid complainant's equity, which must otherwise prevail. The answer or plea setting it up, is no evidence against complainant, who is not bound to contradict it. It must be established, *affirmatively*, by the defendant, independently of his oath. Boone vs. Chiles. 10 Pet. 211; and cases there cited.

Haselton's *deposition* does not prove that the purchase price was paid. He says .. .. .. I made a *bona fide* sale to the Bartow Iron Company, of Georgia, of the S. E. ¼ of Sec. 3, and they entered into possession, ... Print, 81.

There is no proof that the Bartow Iron Company *paid the purchase money*, and *it is not an innocent purchaser*. Buck vs. Williams, et. als. 10 Heisk. (Tenn. Rep.) 282; 2 Yerger 193.

Defendant must prove *all* the essential elements of the plea. Boone vs. Chiles, 10th Pet., *supra*.

It *must be proved* that the *price was fully paid*. Jarman vs. Farley, 7 B. J. Lea. (Tenn. Rep.) 144.

It is not *sufficiently* proved that *Haselton* was *seized in fee of the title*.

There can be *no innocent purchaser* from one who was not *seized of the title*. White vs. N. N. R. Co., 7 Heisk., (Tenn. Rep.) 550.

Want of notice of plaintiff's right and equity, does not sufficiently appear. Boone vs. Chiles, *supra*.

Haselton, in his answer, says:

* * * * "After said sale respondent was made President, and is now the President of said Bartow Iron Company. Print 25.

IDENTITY OF SUITS.

In the written agreement of the parties, used as evidence on the trial in the Courts below, these words appear: * * * In the suit of V. A. Gaskill and wife, H. L. Gaskill, as complainants, against John Badge, A. C. Eaton, James C. Haselton and others, as defendants, brought *Dec.* 5, 1874, in which the Chancery Court of Hamilton County, Tenn., decided in favor of complainants. * * * * Folio 314. (Print 115.)

Exhibit No. 2, to said agreement, is a copy of the bill in that case. Folio 388. Print 142.

It is endorsed, "*Filed 5th Dec.*, 1874." Folio 405. (Print 147). See, also, same bill in transcript of record of the Supreme Court of Tennessee, page 2, et seq.

In the said agreement, are these words:

"And the *alleged title* of *complainant H. L.* to *S. E.* ¼ *of Sec.* 3, of land where the Vulcan Mines are situated, was *called in question in said Chancery suit.*" * * * Folio 319. (Print 116). .. .. .. "that the defendants in the case of Gaskill and wife against Badge & Eaton and others, in the Chancery Court at Chattanooga, was appealed by the Defendants in Feb. 1878, to the Supreme Court of the State, at Knoxville." .. .. .. "and which appeal is pending and undecided in the Supreme Court. Print 116, 117.

The agreement is dated in these words: "This Sept. 4, 1879." Print, 116–117 (folio 319–320).

See, also, order granting appeal, Feb. 9, 1878, Transcript R. Sup. Ct. Tenn. 463.

That case of Gaskill and wife vs. Badge & Eaton, et als., was decided at its September Term, 1879. See 3 B. J. Lea (Tenn. Rep.), 144–145.

The decree of the Supreme Court was rendered Nov. 5, 1879. See Orig. T. R. Sup. ct. Tenn., pages 491–492.

In that decree, it was agreed by the parties, that the complainant, H. L. Gaskill, had been divorced from her husband, V. A. Gaskill, and that she was restored to the name of Harriet L. Whiteside. See, *Original Folio*, p. 8, *supra.*

Decree granting her the divorce. See Print 154, used in this case.

Answer of Badge & Eaton, Print 147, et seq.

Answer of Haselton, Print 152–153, in the case decided by the Supreme Court of Tennessee. See, also, Haselton's admission in his answer to integ. 7 in his deposition Print 84 folio 229.

It cannot be denied that the two suits are *identical, on the question of title to the land*, with the *single exception, that, in this suit, now to be* ~~decided~~ *by this Court*, the *Bartow Iron Co. claims* the *legal title through*, and *as purchaser from Defendant Haselton.* Haselton's pretended sale to deft., Bartow Iron Co., took place *after* the *first* bill was filed, and *before* the *last* bill was filed.

The *plea* of *innocent purchaser*, by the Bartow Iron Co., being disposed of, not having been sustained by proof, the case

*decided

of Gaskill and wife vs. Badge & Eaton et als., decided by the Supreme Court of Tennessee, is *conclusive* of the question; and is binding on this Court. 3 B. J. Lea (Tenn. Rep.) 144 et seq.

LAND TITLES.

STATE AND FEDERAL DECISIONS.

It is well settled that the U. S. Courts follow the decisions of the State Courts, with regard to land titles.

The Supreme Court of the U. S. follows the local law, and holds, that *land titles* must be acquired or lost according to the laws of the State where the lands in question are situated.

Williamson vs. Berry, 8 How.; Suydan vs. Williams, 24, How. 427.

The rule is not changed by reason of the fact that the decision of the Federal Court was rendered *prior*, in time, to the decision of the State Court.

Subsequently to the decisions of the Supreme Court of the U. S., in the case of Williamson vs. Berry; Williamson vs. the Irish Presbyterian Church; and Williamson vs. Ball, reported in 8 How., the Court of Appeals of the State of N. Y., *affirmed* a *different opinion* from that of the Supreme Court of the U. S., respecting the *title* to the *same real property* involved *in those decisions.*

The case, from the Court of Appeals of the State of N. Y., was carried to the Sup. Court of the U. S., when *that* Court, (notwithstanding its former adjudication of the *same title,* reported in 8, How. to the contrary), *adopted* the decision of the Court of New York, in conformity to the rule which uniformly governs that Court, that, where any principle of law establishing a *rule of real property*, has been settled in the State Courts,

the *same rule* will be applied by that Court that would be applied by the State Tribunals. Towle vs. Forney, 14 N. Y.; Suydan vs. Williamson 24 How. 427.

To the same effect, see 96 U. S. Rep. 635–636.

COMPLAINANT'S CLAIM OF TITLE.

1. Deed of Erasmus Alley to J. Holmes Agnew and James C. Haselton, folio, 333, (Print 121,) *incorrectly* registered, *S. E.* ¼ *of Sec.* 11, *instead of S. E.* ¼ *of Sec.* 3; same deed as afterward, *correctly*, registered, *S. E.* ¼ *of Sec.* 3, instead of S. E. ¼ of Sec. 11. Print 122–123.

JUDICIAL SALE.

2. Supreme Court decree of sale. Print 117–118.

Supreme Court decree *resting title* in complainant H. L. Whiteside. Print, 119–120. Writ of possession putting her in possession of the land. Dec'r 27, 1867. Print 120–121.

3. Deed of Erasmus Alley to H. L. Whiteside. Folio, 343–346. Print 125–126.

This deed is dated 27 April, 1870; and is valuable for this, if nothing more, it was an *estoppel* upon Erasmus Alley to have the S. E. ¼ of Sec. 3, sold *thereafter* by execution, to pay the balance of his purchase money. This is another reason why Haselton acquired nothing, under his purchase at execution sale, as against complainant.

The *adverse* possession of Mrs. Whiteside continued from Dec'r 27, 1867, when she was put in possession, under her purchase at judicial sale, to July 1, 1875, a period of more than seven years. This possession was continuous and unbroken, *in fact*, for that period. See, answers to questions 10 to 13, inclusive, in the deposition of complainant. Print 103–104, Fol. 283; also, answers, in A. C. Eaton's deposition, to questions 1 and 2. Print, 4, 7, 49, Folio 125, 134.

The legal effect of this *adverse* possession for seven years, without suit brought and prosecuted, by Haselton to a success-

ful termination, constitutes an absolute bar to his claim, (or any one claiming through him,) under the laws of Tennessee.

See 5 Hum. 605, 608; 4 Yerg., 94.

Meigs, Rep. 613, 619.

At the time the deed made by the heirs of Agnew to J. C. Haselton, in 1873, the complainant, H. L. Whiteside. was in the *adverse possession* of S. E. ¼ of Sec. 3. See proof, *supra.*

For this reason, the deed is champertous and void. See, 3 Head, (Tenn. Rep.) 187, et. seq. The same rule applies to defendant, Bartow Iron Company's deed.

CONCLUSION.

5. In view of all the facts in the record, it is clear that no one was misled or injured by the error in the registration of the *S. E. ¼ of Sec.* 3.

Haselton and Agnew, the original purchasers from Alley, were all before the Court in the judicial proceedings, under which Mrs. Whiteside purchased.

They all understood the S. E. ¼ of Sec. 3, and the Vulcan Coal Mines, to be included in her purchase. They acquiesced in it for years after it was made. There is *no such innocent purchaser* before this Court, as can avail himself of the alleged error of description. It would be *inequitable* to allow Haselton or the Bartow Iron Company to take the title to the land, for which Mrs. Whiteside paid the purchase money, by reason of a *mistake* in the registration of the deed, which did not mislead any one, or occasion anybody any damage. 3 B. J. Lea. (Tenn. Rep.) 149.

PARTITION.

On this subject, in addition to the sections of the Code of Tennessee, copied in our brief filed in this case, October Term, 1881, at pages 8, 9, we, here, copy section 3277 of the Code :

SEC. 3277. The Court, on appearance or default, shall *declare;* the *rights, titles and interests of the parties, in the premises,* and *give judgment that partition be made between such of them as have any right therein, according to such right.*

See, also, note to Dean vs. Snelling, 2 Heisk, (Tenn. Rep.) 484.

JURISDICTIONAL AMOUNT.

At the October Term, 1881, of this Court, the requisite number of printed Briefs were filed by us, in *support of the jurisdiction* of this Court. We beg to, here, refer to and adopt them as part of this brief, (in connection with the opinion of his Honor Chief Justice Waite,) as *conclusive* of this question.

DEWITT & SHEPHERD,
Of Counsel for Mrs. H. L. Whiteside.

SUPREME COURT U. S.
FILED
JAN 3 1884
JAMES H. McKENNEY, Clerk.
BURGOYNE Law Tel. 587 & 593 & 611 1884 Pr.

110-296

Supreme Court of the United States.

H. L. WHITESIDE,
Appellant,

AGAINST

THE BARTOW IRON COMPANY and JAMES C. HASELTON,
Appellees.

No. 200. Oct. Term, 1883. Brief for Appellees.

By permission of this Court we now submit a motion to dismiss the appeal on the part of Haselton, appellee, on the following grounds:

A. The matter in dispute in this action does not exceed the sum or value of five thousand dollars, exclusive of costs.

The bill was filed to recover rents and profits of certain mining lands in the State of Tennessee, alleged to be due and owing from defendant, Haselton, or the Bartow Iron Company, or both, to the complainants, in right of appellant.

The bill alleges that complainants, in right of appellant, are the owners in fee of an undivided half interest in said lands, describing them (p. 2); that the other interests in said lands are owned by defendant Haselton, or the Bartow Iron Company; that upon said lands are situated the Vulcan Coal Mines (p. 3); that Haselton and the Bartow Iron

Company have been using and operating said mines from the 1st of June, 1875, and "*have never ac-* "*counted for or paid to complainants rent for said* "*premises*" (p. 3); that "*the rents or net proceeds* "*of said mine,*" since June 1st, 1875, "*are, or should* "*be the sum of five thousand dollars, one-half of* "*which belongs to complainants in the right of said* "*H. L. Gaskill;*" that complainants under this bill, "*only claim an account and payment of one-half* "*the rents or income from said property*" (p. 3); that complainants have an equitable lien on Haselton's interests in said lands, and in the machinery, fixtures and tools thereon, or connected therewith, or used in operating said mines; and that said lien should be declared and enforced for the purpose and to the extent necessary to pay and satisfy whatever amount may be decreed against defendants, "on account of *rents and profits arising from the use of said property and mines*" (p. 4); that complainants have demanded "*an account, settlement and payment of rents*" from the defendants, but that the same has been refused (p. 4).

The prayer for relief is that Haselton and The Bartow Iron Company may be enjoined from selling or transferring their interest in said lands, machinery, fixtures, tools, &c., and that an attachment may issue against all said property and against the individual property of Haselton and said company, "*so far as the same may be necessary to satisfy* "*complainants' demand, debt, interest and all costs* "*of this litigation*" (p. 5); that an account be ordered and taken of all *rents* received by defendants from any houses, cleared lands, &c. * * * "and that a final decree be entered in their (com- "plainants') favor *for the same*, with all proper in- "terest and costs" (p. 5); that a sale of all the property attached be had, or of "so much thereof as may "be necessary to satisfy complainants' *decree for* "*debt interest* and costs" (p. 5).

Complainants pray that a partition of said lands and Vulcan mines be had (p. 5), but this is the only

allusion in the bill to the subject of partition, and not a particle of evidence was given regarding the relative positions and values of the several parcels composing the entire tract—absolutely no evidence appropriate to an action for partition, or calculated to inform the Court as to the propriety and feasibility of making partition in kind.

The entire framework of the bill, as well as the general scope and direction of the evidence show, almost beyond possibility of question, that the subject of controversy—"the matter in dispute"—was simply the rents and profits of the premises, alleged to have accrued since June 1st, 1875.

The maximum amount of rents and profits claimed, and so explicitly stated in p. 3 of the bill, was twenty-five hundred dollars, with interest to be computed from no specified dates, but from no date prior to June 1st, 1875.

That this was well understood both by the Chancery Court and by the parties to be the sum or value of the matter in dispute is clearly shown by the terms of the fiat of the Chancellor (p. 3) ordering an attachment and injunction as prayed, "on complain-"ants executing attachment and injunction bond "*in double the amount of complainants' demand as* "*set forth in the foregoing bill.* The bond will be "in $5,000."

Complainants' demand as above stated, with interest, could not, by any possible computation, amount to five thousand dollars.

Nor can the sum or value of the matter in dispute be swelled by the fact that defendant Haselton, in his separate answer, undertook to allege, by way of cross-bill, a claim against complainant H. L. Gaskill for rents of certain portions of said lands; for the reason that said answer, in so far as it was made a cross-bill, was dismissed and stricken out on the demurrer of complainants (page 39).

Partition.

The evidence shows that Haselton transferred by deed with covenants of warranty on September 8th, 1875.

Deed recorded September 11th, 1875 (page 171).

The S. E. ¼, Sec. 3, together with other lands—Haselton in his answer (p. 27), admits in substance that the mines in controversy are located on the S. E. ¼, Sec. 3.

Haselton had no interest in the fee after September 8, 1875. The Bartow Iron Company were the owners of the fee by deed from Haselton.

So by the statute of Tennessee Haselton would not be a proper party in a suit of partition on August 8, 1877.

Tenn. Code (T. & S).

"Sec. 3270. The bill or petition shall set forth, as far as known, the names of the owners, their residence, which of them are infants or married women, and to whom married; describe the property, its situation, the title by which it is held and possessed, and such other facts as may be deemed necessary, and pray the Court to cause it to be divided amongst the claimants according to their respective rights and titles."

In accordance with this section Haselton would not be a proper party in a suit of partition. He had no interest in the S. E. ¼, Sec. 3, after September 8, 1875.

The Bartow Iron Company is a proper party.

Then the only question now is as to what interest the appellant had in the profits of the Vulcan mines from June 1st, 1875, until September 8, 1875.

This will require the statement of the whole case, which we now proceed to give.

Statement of Facts.

On the 7th day of January, 1859, Erasmus Alley conveyed by deed (p. 95) certain lands to J. Holmes Agnew and James C. Haselton, situate in Marion County, Tennessee. In said conveyance a full interest in 1,000 acres are conveyed, consisting of five separate tracts in the first fractional township; and in the second fractional township, an undivided half interest in some twelve distinct tracts, half sections, quarter sections and parts of quarter sections, being a half interest in 1,118 acres (which embraces the S. E. ¼ of section 3), all in the 6th Range west of the Basis Line of the Ocoee District. This deed was recorded 10th March, 1859. In its registration, the said S. E. ¼ section 3 does not appear, but in its stead appears the S. E. ¼ section 11.

As a part of the history of these lands, we would state that Haselton, on the 30th December, 1859 (p. 108), conveyed his interest to William O. Giles. On the 8th December, 1859 (p. 110), J. Holmes Agnew conveyed his interest to his son Samuel J. Agnew, who on 22d June, 1866 (p. 112), conveyed to Haselton, and W. O. Giles conveys to Haselton, dated 29th May, 1873. (See "statement of facts," p. 107). In these several conveyances, said S. E. ¼ of section 3 does not appear. They were doubtless drawn from the descriptions from the registration.

The price of the lands was $7,500, of which $3,500 was paid in cash. For the balance, Alley filed his vendor's bill in 1860 (p. 164). This bill fails to decribe the S. E. ¼ section 3, but does discribe S. E. ¼ section 11. Alley says he obtained the descriptions from the registered deed (p. 139). This bill fails, or its decrees do, to describe other lands actually sold. See the decree to sell (p. 117). The lands advertised for sale (p. 99). Decree confirming sale (p. 119). We have arranged the evidence of title under four heads:

A. THE LANDS SOLD BY ALLEY TO HASELTON AND AGNEW.

B. THE LANDS DESCRIBED IN THE DECREE TO SELL.

C. THE LANDS ADVERTISED FOR SALE.

D. THE LANDS DESCRIBED IN THE DECREE *confirming the sale.*

See p. 95, under Class A.
See p. 117, under Class B.
See p. 99, under Class C.
See p. 119, under Class D.

The following lands are not described in B, C, or D:

N.E. ¼ Sec. 27, 1st F. T.
N.W. ¼ Sec. 27, 1st F. T.
S.E. ¼ Sec. 21, 1st F. T.
S.E. ¼ Sec. 3, 2d F. T.

And were not sold under the foreclosure of the vendor's lien by Alley. The fee still remained in J. Holmes Agnew and Haselton, or their grantees.

1. Because of the war there was no decree till 1866 had in the Supreme Court, the cause having been taken up from the Marion Chancery Court. The sale was on the 10th of May, 1867, and such lands as were described and sold under said proceedings were purchased by the appellant, Mrs. Whiteside, at the price of $5,500, which was paid with a preëxisting debt.

2. In the spring of 1867, (p. 47), Haselton & Cravens rented to Badge & Eaton land for mining purposes. In their selection, as it afterwards turned out, they opened their coal mines upon the N. E. ¼ sec. 3 and S. E. ¼ of sec. 3. The map of the lands, mines, &c., will be found on page 94.

3. Before Badge & Eaton were prepared to ship coal (p. 52), J. P. McMillen, agent for Mrs. Whiteside, with a writ of possession (pp. 135 and 136) put her in possession of the mines. The mines here take the name of the "Vulcan" Mines, and will hereafter be so called.

"Vulcan Mines," situated S. E. ¼ sec. 3, pp. 106–107. Eaton's Deposition.

The said S. E. ¼ of sec. 3 was not described in said Supreme Court writ of possession, but was described in quit claim deed, Ex. F, p. 125, and Badge & Eaton had then but a verbal lease, without any

descriptions of boundaries, they supposing Mrs. Whiteside to own the whole mountain (p. 52).

4. When Badge & Eaton entered upon the land of the Vulcan mines, there was nothing but a wilderness. After building tramways, shutes, houses, &c., to enable them to mine and ship coal, they were informed that Mrs. Whiteside was about to sell or lease the property to others, and not wishing to sacrifice the improvements made, they entered into a written lease with Mrs. Whiteside for five years, to take effect June 1, 1870 (p. 47). Some month or two before this lease, Mrs. Whiteside says she was about to sell the Vulcan mines, when the party proposing to buy discovered the mistake as regards the S. E. ¼ sec. 3, and reported the fact to her, and without letting Alley know anything about it, she procured from him a quit-claim deed for said S. E. ¼ of sec. 3 (p. 101).

The quit-claim is most ingeniously worded; so much so, in fact, that it is not a conveyance, but a writing merely to correct and reform boundaries (see Exhibit F, p. 125). As will be seen from the depositions of D. B. Pillsbury (p. 59), A. C. Eaton (p. 46) and Haselton himself (p. 79), that Haselton always claimed said S. E. ¼ sec. 3. His residence and business for the most part was in New York, and that he was but seldom in Tennessee. Mrs. Whiteside disregarded his or any one else's interest, as will be seen in the cherished provisions to herself, in her lease to Badge & Eaton. Badge & Eaton knew nothing as to boundaries, paid rents to Mrs. Whiteside, relying upon her solvency to protect them, but nevertheless rendered accounts of coal mined to Haselton, as will be seen from the depositions above referred to. Haselton had charge of the Etna mines, some three miles distant. He was well acquainted with the several tracts he had purchased from Alley. Alley says the property was pointed out to him when he purchased, and all the evidences of title shown (p. 139). He was not present when the land was sold at Whiteside in May,

1867, by the Supreme Court Clerk. He had misplaced his deed from Alley, and for some time could show no writings for the S. E. ¼ sec. 3. So in March, 1872, himself and Giles brought their action of ejectment to recover said S. E. ¼ sec. 3, and other sections sold by Alley, but not at the Supreme Court sale. It will be seen from Haselton's answer (p. 25), that the N. E. & N. W. ¼s of sec. 27, and the S. E. ¼ sec. 21, and the ¼ of the N. E. ¼ of sec. 2, nor the undivided half interest in the N. W. ¼ of the S. E. ¼ of sec. 10, as well as the S. E. ¼ sec. 3, were not sold.

5. Haselton and Giles then filed their bill in Chancery, in aid of their suit at law, to set up said Alley deed as a lost deed, and to have it corrected and reformed, if necessary, as to show that said S. E. ¼ sec. 3 had been sold and should be embraced in the deed, and to correct any omission in registration. Afterwards, Haselton finds his deed in New York, and the Chancery suit was dismissed. After the conveyance of the lands described in the deed of Giles to Haselton, and in the lands described in the deed of J. Holmes Agnew's heirs to Haselton, as an exhibit to William Hall's deposition, the suit was dismissed as to Giles, and was then continued from term to term till the July Term, and on the 8th July, 1875, dismissed (see "Statement of Facts, as to ejectment suit," p. 107).

The Badge & Eaton lease expired June 1, 1875. Eaton says in his deposition that Badge & Eaton held possession till July 1, 1875, when they surrendered to Haselton (p. 49), and hence there was no further necessity to prosecute said action of ejectment. Haselton had already acquired what the law would give him. Now, that is all, as regards that part of the litigation.

6. Preparatory for said ejectment suit, in June, 1874, the lands were surveyed, and from which it was ascertained that Mrs. Whiteside had not purchased the S. E. ¼ sec. 3 (see Hall's deposition, p. 92). After that, as shown by A. C. Eaton's deposi-

tion, Badge & Eaton refused to pay rents to either Mrs. Whiteside or Haselton, and, as shown by Haselton (p. 81), he commenced suit against Badge & Eaton and Mrs. Whiteside for a Receiver to care for the property and for rents. Badge & Eaton securing him by a deed of trust, this suit was dismissed. So there is nothing whatever in dismissing these suits to indicate that Haselton had abandoned any right whatever, but, on the contrary, shows him most vigilant in maintaining his rights.

Haselton owned a half interest by purchase from Alley, having obtained deeds from J. Holmes Agnew's heirs (p. 96). In January, 1874, he purchased Boyce and Cravens' $\frac{3}{8}$ths interest, and in December, 1874, purchased the $\frac{1}{8}$th interest owned by the estate of James A. Whiteside, which completed his title for the whole of the S. E. $\frac{1}{4}$ sec. 3.

In addition: At the Supreme Court sale in May, 1867, when $5,500 was bid, taking $150 for costs, leaving Alley a credit for $5,350, there was a considerable balance due him from Haselton and Agnew upon the Supreme Court decree as vendor. Finding out what sections of land he had sold Haselton and Agnew that had not been sold under the Supreme Court proceedings, he has an execution issued, and these lands levied upon and sold, and which Haselton purchased, and obtained a sheriff's deed (p. 97). Mrs. Whiteside made no resistance. It evidently shows that Alley at that time, February, 1875, did not regard his quit-claim deed to Mrs. Whiteside, dated in April, 1870, as conveying to her said S. E. $\frac{1}{4}$ of sec. 3 Yet he had said before, he made Mrs. Whiteside this deed to do justice, etc. There are no facts in any of the law suits to reconcile the inconsistency of such conduct. At the time he signed the deed, and the cautious manner in which he was approached by Mrs. Whiteside, and the artful wording of the deed—the absence of any consideration—all tend to show that he was signing nothing more than a writing to make certain the boundaries of the lands that had

been sold. True, Mrs. Whiteside says she gave him as consideration the use of some mineral springs on the mountain, but Alley says he had already had that from Haselton, as will be seen from their depositions. A quit-claim deed, however, obtained through devices, collusive and without consideration, will not avail against a party in possession.

8. On the 5th of December, 1874, Mrs. Whiteside filed her bill in the Chancery Court, at Chattanooga, jurisdiction being waived, against Badge & Eaton, to collect rents, and against Haselton, to set aside the deed of trust made to secure liens upon certain indorsement for Badge & Eaton (p. 142). This was a waiver as to any question of adverse, notorious, and continuous holding by Badge & Eaton as her tenants, under the statute of limitations, as intimated in some portions of her testimony. Badge & Eaton answered fully, filing their answer as a cross bill, disputing Mrs. Whiteside's title. See Exhibit No. 8, p. 147. Haselton answered merely in support of his trust deed (p. 152). See exhibit A. No. 4, p. 153, which is the trust deed. Page 163 is Mrs. Whiteside's answer to Badge & Eaton's cross bill. The other defendants have nothing to do with the question of title. The decree in the cause was in favor of Mrs. Whiteside (p. 131). Haselton's trust deed was set aside as to Mrs. Whiteside, as hindering and delaying creditors, &c. The case was appealed to the Supreme Court. This suit was determined on the 10th September, 1879, and the bill dismissed, from which Mrs. Whiteside appeals (p. 172).

Point I.

The State Supreme Court, at its September Term, a few weeks afterwards decided the cause before it

in favor of Mrs. Whiteside. The opinion is in 3 Lea. 144 (Tennessee) Reports. That opinion cannot affect the Bartow Iron Company and Haselton's rights in the suit before this Court.

Point II.

Because it is not between the same parties. Badge & Eaton were tenants without title, and they, not Haselton, were endeavoring to show that Haselton had a better title than Mrs. Whiteside. It was a suit between landlord and tenant. Haselton was a party for other purposes than that of contesting the title. He is not estopped.

In fact, the Court has only decided the sale good as between Alley, Haselton, and Mrs. Whiteside, that her purchase at Supreme Court sale covered the S. E. ¼ sec. 3.

The decision is not based upon any legal right, but upon the equity that Mrs. Whiteside having paid $5,500, and believing she was buying ALL *the land, she had, as between these parties, purchased all. But in reply to this we say she purchased with a prëexisting debt, and at a judicial sale, in which caveat emptor always applies, and she has none of the benefits of an innocent purchaser, to enable her to correct the mistake made, nor could she do so without a direct proceeding.*

References to the land conveyed by Alley was to the deed as registered, which was the only record to which the public could look—could not be to the deed Haselton had in his pocket.

Point III.

The decision passes over the Alley quit-claim deed with suspicion, saying it was not necessary whether

any title was acquired by it, and intimates that a bona fide purchaser might have gotten a good title from Alley before the correct registration. We maintain that when a vendee buys in the land sold him by his vendor, under an execution for the balance of the purchase money, he is as much of a third person or innocent purchaser in law as a stranger to the transaction would be. And, in regard to this matter, both the correct registration and the Sheriff's deed showed title in Haselton—legal proceedings alone have given Mrs. Whiteside any title. The Bartow Iron Company was a resident of Georgia, as shown by the bill, its answer, and Haselton's testimony and answer, and is therefore not affected with notice of lis pendens, and has the right of an innocent purchaser. Shelton vs. Johnson, 4 Sneed., 672, (Tennessee Reports). The Bartow Iron Company is both a third person and innocent purchaser that is seeking to avail itself of the error in said sale, which changes the similarity of the two suits materially. The sale was made in Georgia, the residence of the company (p. 19).

Point IV.

The decision assumes an acquiescence on the part of Haselton for years. Now, in the suit in this Court anything else but an acquiescence is shown. The decision goes as far as to say a spring—no definite spring—seems to designate the land; which we think is a wild description.

The decision says the lands were sold—on which the Vulcan Mines had been opened, and which constituted the chief value of the whole, &c. The proof is that, at the time of the sale, the mines had not been opened. Eaton says when they entered upon the land there was nothing but a wilderness (p. 47). There

is nothing to show that the precise locality had been determined upon. Mrs. Whiteside says the Supreme Court Clerk mentioned the "Vulcan Mines" by name. See answer to 5th question (p. 105), in which she says: "I remember his speaking of selling the Vulcan Mines before the sale commenced, and also Mr. Key and Alley, mentioning the Vulcan Mines as the principal piece of property, or the property of most interest sold." In rebuttal to this only see Eaton's answers to questions in pp. 106–107. It was in the latter part of the spring of 1867 before any openings were made, and that the mines were not known as the Vulcan Mines till December, when they commenced shipping coal. She doubtless had reference to the Alley Mines on section 10. This particular fact was not before the State Supreme Court. The after acquired information or fact that made the Vulcan Mines the chief value of the purchase cannot avail. The facts and circumstances must be such as are capable of proof on the ground at the time of the sale. And the mere fact that the clerk, in crying the sales, said that he was selling coal lands, has no significance, as all auctioneers exaggerate.

Point V.

We make mention of these things for the purpose of showing the dissimilarity of the two cases, and the different facts and pleadings of the two cases, verifying the old saying that "circumstances alter cases."

Now, as to Haselton. He in no manner can be decreed against. Both the Bartow Iron Company, by its secretary and treasurer, and himself most positively swear the sale of the Vulcan Mines and lands was bona fide (see deed, p. 171), and that after the sale Haselton's individual interests ceased.

He was not president of the company till after the sale, and scarcely did anything in that capacity. There is not one particle of proof showing the sale tainted with fraud. It is not attacked in any manner for fraud, and whatever rights Mrs. Whiteside may have, must be—cannot be otherwise than against the Bartow Iron Company, who alone occupied and operated the mines, and not against Haselton. The attachment of his property was wrongful, unjust and oppressive, and coercive in its tendencies.

Point VI.

When lands are sold under a vendor's bill, and the decree directs *all* the land to be sold, yet fails to describe or designate certain tracts, can a purchaser claim more than are described in the pleadings, and such as are capable of proof at the *time* of sale? Can after acquired facts and circumstances be regarded and relate back to date of sale? If *all* the lands sold by the vendor has reference to a defective registered deed, will not the registration control and limit the purchaser? for such reference must be to a matter of record to which the purchaser must look.

4 Humphreys, 433: 7 Humphreys, 180; 1 Swan, 375; 5 Caldwell, 621.

Point VII.

A quit-claim deed obtained through devices, collusion and without consideration will not avail against a party in possession.

When a vendee purchases the land sold him by his vendor under an execution for the balance of the

purchase money, he is as much of a third person in law or innocent purchaser as a stranger would be.

A non-resident is not affected with notice of *lis pendeus* and is an innocent purchaser.

4 Sneed, 672.

There can be no conflict in the Federal and State Courts about the same subject matter when there are different parties and a different state of facts.

For these reasons, we say that the motion to dismiss the case as to Haselton, appellee, should be granted for want of jurisdiction, and the decree should be affirmed as to the Barton Iron Co.

NASH H. BURT,
Of Counsel for The Barton Iron Co.

GEORGE NORRIS,
Of Counsel for James C. Haselton.

110-296

Office Supreme Court U. S.
FILED.
JAN 11 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

H. L. WHITESIDE,
Appellant,

vs.

JAMES C. HASELTON, THE BARTOW IRON COMPANY,
Appellees.

No. 200.
October Term,
1883.

Reply to Argument for Appellant.

We beg leave to submit the following reply to the argument for appellant.

The first suit will be called No. 1.
Original Bill, pp. 142–147.

PARTIES.

(*a.*) Complainants: V. A. Gaskill and H. L. Gaskill.
Respondents: John Badge, Albert C. Eaton, E. G. Eaton, J. C. Haselton, A. A. Hyde, N. G. Eaton and John B. Tally.

(*b.*) Allegations of bill:

That ownership and an interest in the "Vulcan Mines," in Marion County, Tenn., belonged to them.

(*c.*) That they leased the same to John Badge and E. G. Eaton for five years, from June 1, 1870, with a privilege of one

renewal for five years, from June 1, 1875, at a minimum rental of one hundred dollars, to be paid monthly.

(*d.*) That they are to have increased rents if more coal is mined, and that lessees are to pay the taxes.

Pp. 142, 143.

(*e.*) That, by a condition in the lease, if lessees failed to make these payments, there was a forfeiture of the lease, at the option of the complainants, and if enforced, the buildings, tramways, entries and houses upon the land were to become the property of complainants.

(*f.*) That rentals were not paid—several judgments were procured against the lessees in the Justice's Court in Hamilton County Tenn., Nov. 7, 1874.

(*g.*) That fourteen hundred and four and $\frac{75}{100}$ dollars from rentals were due Nov. 1, 1874.

Pp. 143, 144.

(*h.*) That a fraudulent combination was formed of the respondents Badge, A. C. Eaton, E. G. Eaton with J. C. Haselton—for such fraud and for such fraudulent purpose. Badge and the Eatons have conveyed to Hasleton on the
day of November, 1874, the personal property belonging to them, situated on the leased land, to defraud complainants.

(*i.*) That lessees declare they will not renew the lease from June 1, 1875.

(*j.*) That Haselton, Badge and Eaton are using the leased premises in operating other coal mines than the "Vulcan" which are situated on the Raccoon Mountain property to the injury of complainants.

P. 146.

(*k.*) That E. G. Eaton conveyed the "Shell Mound" property to A. A. Hyde as trustee.

(*l.*) That the interest of H. L. Gaskill is $\frac{1}{2}$ in her own right,

and ⅛ as executrix of J. A. Whiteside, and that the other interests belong to R. Cravens and J. P. Boyce.

P. 147.

PRAYERS.

(*m.*) For an accounting.

(*n.*) For an attachment.

(*o.*) For an injunction.

(*p.*) That the deed of trust to Hyde, trustee, be set aside.

(*q.*) That the conveyance to Haselton by Badge and the Eatons be set aside.

(*r.*) That complainants have the general relief to which they may be entitled upon the proofs.

Filed December 5th, 1874.

II.

(*a.*) The separate answer of John Boyce, A. C. Eaton, will be found pp. 147 to 151.

(*b.*) They admit the lease of such an "indefinite description" of land as is shown by Exhibit "A" to the bill.

This exhibit is not in the record, but Exhibit "E," pp. 123 124, is the Badge and Eaton lease.

(*c.*) They deny collusion and fraud with Haselton or any one else.

(*d.*) They deny that the complainants owned the fee of the southeast quarter of section 3, and allege that Haselton owns the fee together with other quarter sections.

P. 149.

(*e.*) That this answer be taken as a cross-bill, and deny in detail the other allegations of the bill.

Filed April 13th, 1875.

P. 151.

III.

The separate answer of Haselton will be found pp. 152–153.

(*a.*) Admits the making of a contract with John Badge, E. G. Eaton, of one part, and R. Cravens and himself of the second part, under which they possessed themselves of the premises.

(*b.*) That Badge and Eaton made a deed of trust to Haselton as security for advances of money to them.

(*c.*) Denies collusion and fraud with Badge and Eaton or any one else.

(*d.*) That on Dec. 17, 1874, he purchased $\frac{1}{8}$ interest of the Whiteside estate in S. E. $\frac{1}{4}$ sec. 3, together with other lands.

(*e.*) That in Jany., 1874, he purchased from Boyce and Cravens their interest in the S. E. $\frac{1}{4}$ sec. 3, together with other lands.

P. 152.

(*f.*) That he purchased $\frac{1}{2}$ interest in S. E. $\frac{1}{4}$ sec. 3, together with other lands on Feby. 2d, 1875, at the foreclosure sale of the vendor's lien of

ERASMUS ALLEY *vs.* J. HOLMES AGNEW and JAMES C. HASELTON, pp. 97–98.

(*g.*) That J. Holmes Agnew and James C. Haselton owned the fee of this $\frac{1}{2}$ interest in S. E. $\frac{1}{4}$ sec. 3, together with other lands.

See Deed, p. 95.

(*h.*) These grantees gave E. Alley a vendor's lien on an undivided $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 3, together with other lands purchased, which lien remained on this qr. sec. until the sale under foreclosure, Feby. 2, 1875.

Pp. 97–98.

(*i.*) That he is entiled to the rents as owner in fee of the "Vulcan Mines," and prays that the bill be dismissed, with costs.

Filed April 13, 1875.

IV.

The separate answer of E. G. Eaton will be found pp. 155–160.

(*a.*) There is not an admission, denial or allegation in this answer that can preclude Haselton, we simply call attention to it and pass.

V.

The joint and separate answer of V. A. Gaskill and wife, H. L. Gaskill, to the cross-bill of complainants, Badge and Eaton will be found pp. 161–164.

(*a.*) They reaffirm the allegations of the original bill.

P. 161.

(*b.*) They deny the charge that they did not own the land upon which the "Vulcan Mines" are located.

P. 162.

(*c.*) They deny the Vulcan Mines were not embraced in the writ of possession.

P. 162.

(*d.*) They deny that Badge and Eaton have the right to require the exhibition of a title in fee, or that they can be heard to dispute the title of respondents.

(*e.*) They deny that the operating the Vulcan Mines through and into the Raccoon Mountain coal leased land was in good faith, but was done to injure respondents, in enforcing their rights under the lease of June 1, 1870.

P. 163.

(*f.*) Respondents do not know how near complainants came to grasping a fortune, but they deny "that they committed trespasses on the *billows of equity*."

(*g.*) They deny all fraud, and pray to be hence dismissed, and all the relief prayed for in the cross-bill may be denied, and it is nothing to Badge and Eaton whether respondents had a good title or not, as they have had the full fruit of their contract.

P. 163.

And that it is an unimportant proposition in this case whether H. L. had title or not, but deny that H. L. did not have title.

P. 163.

Pray that cross-bill be dismissed.

VI.

(*a.*) There are no supplemental or amended bills in evidence in this action, but from a decree entered by Gaskill and Gaskill, pp. 131 to 135, we learn that a supplemental bill and an amended bill were filed.

P. 131 and 132.

Decree entered Dec. 15, 1876.

(*b.*) Supplemental and amended bills served July 21, 1875, with process to answer at the October Term, 1875.

P. 132.

(*c.*) John Badge, A. C. Eaton, J. C. Haselton and David Pillsbury, did not answer, plead or demur to the supplemental bill or to the amended bill.

The complainants took a decree, *pro confesso*, Dec. 15, 1875, upon the original, amended and supplemental bills. Exhibits thereto, answers and exhibits thereto, and the proofs and other exhibits in the cause.

(*d.*) The court adjudges and decrees—

That complainants are entitled to the relief sought by their bills; that the title to the lands embraced by the terms of the lease (Exhibit A to Complainants' Bill) and in the deed of E. Alley to H. L. Whiteside, dated April 26, 1870 ("Exhibit A,") is and was at that date in complainant H. L. Whiteside, and superior to the title of defendants, and that at time of making lease (June 1st, 1870,) to Badge and the Eatons was in possession of "Vulcan Mines," and that the said Badge and Eatons and Haselton regarded and recognize the complainant, H. L. Gaskill, as the owner of said lands, including "Vulcan Mines," and that independent of any questions as to superiority of title in fee, the said defendants Badge, A. C. and E. G. Eaton, are estopped from disputing the title of complainant H. L. Gaskill—Pp. 132–133—in this action for rents and for possession of said leasehold premises.

And further, that complainants recover from defendants the possession of all said leasehold premises, including said "Vulcan Mines" and property thereon, mentioned in said "Exhibit A," to wit: all buildings, houses, tramways, tracks, entries and approaches to said mines and upon said lands; this the court decrees, because it appears in said cause that defendants Badge and the Eatons illegally and wrongfully conveyed their property above named to the said Haselton and for the purpose of defrauding the said complainant, H. L. Gaskill.

Also, that defendants Bodge and the Eatons account to said

complainants H. L. Gaskill, for all rents yet due by terms of lease aforementioned, and that the trust deed executed by Badge and the Eatons to David Pillsbury to secure certain debts, is and was fraudulent and void as to the complainants, and the same as to them is set aside.

VII.

(*a.*) No reply by Gaskill and Gaskill to Haselton's separate answer.

(*b.*) No special prayer in the original billof Gaskill and Gaskill to have the title to the fee of the Vulcan Mines decreed to be in complainants. There is a general prayer for relief.

(*c.*) The amended and supplemental bills not put in evidence in this cause, but the presumption is that they are more defective than the original, and are probably lost in the foam of the "billows of equity."

(*d.*) Gaskill and Gaskill, in their answer to the cross-bill of Badge and Eaton, deny the right of Badge and Eaton to question the title of their landlord. They say "it is an unimportant proposition whether H. L. had a good title or not," but deny that H. L. did not have title. Also allege that B. and E. had the full fruit of their contract.

P. 163.

(*e.*) On September 8, 1875, Haselton transfers the entire interest in S. E. $\frac{1}{4}$ sec. 3, together with other lands to the Bartow Iron Company.

P. 171.

Deed recorded September 11, 1875.

P. 172.

(*f.*) This was one month before the return of the supplemental and amended bills, at the October Term, 1875.

The Bartow Iron Company was not made a party.
Haselton no longer had any interest to defend.

(*g.*) This chancery court decrees *pro confesso.*

(*h.*) There was no issue raised as to the title.

(*i.*) Badge and Eaton could not raise it, being tenants.

(*j.*) Gaskill and Gaskill did not raise it, because they made no reply to Haselton's answer.

(*k.*) Nevertheless, the court decreed that the title in fee was in complainants.

After the decree of the Chancellor, respondents Badge, Eaton and Haselton took an appeal to the Supreme Court of Tennessee.

3 Lea (Tenn R.), 144.

Decree of the Chancellor affirmed.

VIII.

We came now to a second suit, brought in the Chancery Court of Tennessee. It was removed to the United States Circuit Court, Eastern District of Tennessee, and the appeal is now being argued in this court, which we will call No. 2.

Pp. 2-6.

ORIGINAL BILL.

Parties:

(*a.*) V. A. Gaskill and wife, H. S. Gaskill, complainants.
James C. Haselton, the Bartow Iron Company, R. Cravens and J. P. Boyce, executor of K. Boyce, deceased, respondents.

(*b.*) That they are owners in fee of one-half undivided interest in S. E. $\frac{1}{4}$, sec. 3, and other lands.

That the other interests are owned by Haselton or by the Bartow Iron Company.

Pp. 2-3.

(*c.*) That Haselton and The Bartow Iron Company are in possession of S. E. $\frac{1}{4}$, sec. 3 and other lands as co-tenants, and that they have had possession of all fixtures, machinery, &c., andworked the same since June 1, 1875.

P. 3.

(*d.*) That they have not accounted to complainants for the rents, and refuse so to do.

P. 3.

(*e.*) That the rents amount to $5,000—one-half of same belongs to complainants.

P. 3.

(*f.*) That Haselton and the Bartow Iron Company have worked the Vulcan Mines together with other mines, and have mixed expenditures and receipts.

P. 4.

(*g.*) That the Bartow Iron Company is greatly embarrassed, even to insolvency, and that it is a corporation organized under the laws of Georgia, and that its individual members are non-residents.

P. 4.

(*h.*) That Haselton and the Bartow Iron Company have an interest in common in said lands, and also in tools and machinery.

P. 4.

(*i.*) That they have a lien in equity on the undivided interest of Haselton in the lands and upon all tools, machinery, &c., belonging to Haselton from rents.

p. 4.

(*j.*) That Haselton, the Bartow Iron Company, and complainants are co-tenants, and that Haselton is the President of the Bartow Iron Company.

P. 5.

PRAYERS OF BILL.

(*k.*) For an injunction against the appellees.

(*l.*) For an attachment against both the appellees.

(*m.*) For an accounting from June 1, 1875.

(*n.*) For the sale of all property attached.

(*o.*) For a partition of the land and the Vulcan mines, and if that cannot be had, then for a sale of all the lands.

(*p.*) For general relief.

IX.

Answer of the Bartow Iron Company.
Pp. 18 to 22.

(*a.*) It denies that it is a tenant in common with complainant in the S. E. ¼ sec. 3.
Pp. 18 and 19.

(*b.*) It alleges that it is the owner of the fee of the S. E. ¼, sec. 3, and purchased the same from Haselton, September 8, 1875. Deed made and delivered in the State of Georgia, the residence of the company.

(*c.*) It denies that the complainants were ever put into possession under the writ of possession of the S. E. ¼ sec. 3.
P. 21.

(*d.*) It denies that Haselton was a stockholder until after the purchase, September 8, 1875.

(*e.*) It denies that complainants are entitled to any rents from S. E. ¼ sec. 3.
p. 22.

(*f.*) In a separate answer it describes the lands purchased from Haselton.

p. 22.

(*g.*) It has no interest in common with Haselton in said lands, or in said personal property described in complainant's bill.

pp. 22 and 23.

(*h.*) It admits it is a corporation solely by virtue of the laws of the State of Ga.

p. 23.

PRAYERS.

(*i.*) That the bill be dismissed.

Filed February 6, 1878.

pp. 18, 22–23.

X.

Separate answer of J. C. Haselton.

pp. 23–28

(*a.*) That he conveyed the fee to the Bartow Iron Company in September, 1875, for the S. E. $\frac{1}{4}$ sec. 3, together with other lands.

p. 23.

(*b.*) That the S. E. $\frac{1}{4}$ sec. 3, together with other lands, p. 25, were not purchased by H. L. Gaskill at the foreclosure sale by E. Alley under vendor's lien.

p. 25.

(*c.*) That he purchased Boyce and Craven's $\frac{3}{8}$ interest in the fee of S. E. $\frac{1}{4}$ sec. 3, prior to the sale to the Bartow Iron Company.

p. 25.

(*d.*) That after said sale he was made president of the company, and that he has (now) no interests in the property so transferred other than as president of the company.

(*e.*) That no fraudulent combination between Haselton and the Bartow Iron Company ever existed.

p. 25.

(*f.*) Denies that he owes complainants any rents for said lands, but alleges that they are indebted to him to a large amount.

p. 25.

(*g.*) Denies that he held said lands or their possession in a fraudulent manner.

p. 25.

(*h.*) Admits the Bartow Iron Company is a corporation solely by virtue of the laws of the State of Ga.

p. 26, 27, 28.

(*i.*) That he is entitled to rents from complainants of S. E. $\frac{1}{4}$. sec. 3.

p. 26.

(*j.*) That H. L. Whiteside purchased certain lands under vendor's foreclosure 10 May, 1867,

p. 27.

and that S. E. $\frac{1}{4}$ sec. 3, together with other lands, were not sold.

(*k.*) That S. E. $\frac{1}{4}$ sec. 3, with other lands, were purchased by himself at public sale, Feb'y 2nd, 1875.

p. 27.

(*l.*) That in Jan'y, 1874, he purchased Boyce & Croseus' $\frac{3}{8}$ interest.

p. 27.

(*m.*) That on Dec. 17th, 1874, he purchased $\frac{1}{8}$ interest from the estate of James. A. Whiteside.

p. 27.

(*n.*) That he is entitled to all the rents after Dec. 17th, 1874, and a larger amount of rents than he received prior to that time.

P. 27.

PRAYERS.

(*o.*) For a decree against Gaskill and Gaskill for rents.

(*p.*) For general relief.

XI.

(*a.*) Complainants demurr to Haselton's cross-bill.

Demurrer sustained.

Dismissing the answer so far as it is a cross-bill.

P. 39 and 40.

(*b.*) Replication of Gaskill and Gaskill to answer, of the Bartow Iron Company. Filed Dec. 24th, 1878.

p. 44.

(*c.*) Replication of Gaskill and Gaskill to answer, of J. C. Haselton.

Pp. 44 and 45.

Filed Dec. 24th, 1878.

XII.

RES ADJUDICATA.

(*a.*) The case of Cromwell *vs.* Sac, 94 U. S., 351, is in point.

Mr. Justice Field delivered the opinion of the court.

On page 352, he says:

(*a.*) "It should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action."

On page 353, also, he says:

"But when the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only, as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.

In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined, only upon such matters is the judgment conclusive in another action."

XIII.

Apply this Rule to the Case at Bar.

As to the parties:

(*a.*) The complainants are the same in No. 1 as in No. 2.

(*b.*) The respondents differ materially.

(*c.*) The Bartow Iron Company is in No. 2, and not in No. 1.

(*d.*) Badge and Eaton are in No. 1, and not in No. 2.

(*e.*) Cravens and Boyce are in No. 2, and not in No. 1.

(*f.*) E. G. Eaton, A. A. Hyde, N. G. Eaton, John B. Tally, and David Pillsbury, are in No. 1, and not in No. 2.

(*g.*) Haselton is in No. 2, but as to him in No. 1, no issue was joined in No. 1. No litigation could be had without an issue. Gaskill and Gaskill did not reply to his answer.

(*h.*) Badge and Eaton could not raise the issue, being tenants.

XIV.

THE CAUSE OF ACTION DIFFERS MATERIALLY IN NO. 1 FROM NO. 2.

(*a.*) In No. 1 suit is brought for rents for "Vulcan Mines" from June 1, 1870, until June 1, 1875; also, to set aside the fraudulent transfer by Badge and Eaton of their interest to Haselton.

Only this, and nothing more, was put in issue in No. 1.

(*b.*) In No. 2 suit is brought for rent of S. E. $\frac{1}{4}$ sec. 3, and other lands, from June 1, 1875, until July 21, 1877.

Also for partition.

Also, the title to S. E. $\frac{1}{4}$ sec. 3, and other lands, is part in issue their pleadings, tried and determined.

(*c.*) These are our reasons for saying that the judgment in No. 1 is not an estoppel in No. 2.

(*d.*) This case conforms to the rule laid down by this court in Cromwell *vs.* Sac; see also Packet Co. *vs.* Sickles, 5 Wall., 592.

XV.

Foreign Corporations.

Bank of Augusta *vs.* Earle, 13 Pet., 520.

The Chief Justice, in that case, says:

(*a.*) "It is well settled that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another and to sue in its courts; and the law of comity prevails among the several sovereignties of this Union."

The rule of comity laid down in

Calwell *vs.* Springs Co., 100 U. S., 59, is terse and to this point.

Mr. Justice Field, delivering the opinion of the court, says:

"The answer to this position is found in the general comity which, in the absence of any positive direction to the contrary, obtains through the States and Territories of the United States, by which corporations created in one State or Territory are permitted to carry on any lawful business in another State and Territory, and to acquire, hold and transfer property there equally as individuals."

In the Supreme Court of Michigan the same rule is applied.

Thompson *vs.* Waters, 25 Mich., 214.

A corporation organized in Indiana purchased land in Michigan. No prohibitory law against it.

It was held that the law of comity sustained it.

(*c.*) Angell & Ames on corporations, p. 399, § 374.

"The Legislature of a State undoubtedly has power to prohibit foreign corporations from contracting in its State, but until it does so, contracts so made will be enforced."

See note 4.

Knox *vs.* Bank, 26 Miss., 655.

(*d.*) The learned counsel for appellant says "that the Bar-

ton Iron Company could not purchase and hold real estate in Tennessee unless its charter conferred such power."

How can the State of Georgia authorize a corporation to do business outside of its jurisdiction?

That requires the consent of Tennessee expressed or implied.

By the law of comity it had the same powers outside of the State to contract and do business, unless the statute of the foreign State prohibits it.

(*e.*) The rule of comity goes further.

Hitchcock *vs.* U. S. Bank of Penn., 7 Ala., 377.

In which case it was held:

"A banking corporation although prohibited by its charter within the State of its creation to take more than six per cent. per annum on its loans or discounts is not affected by such prohibition in another State by whose comity it is permitted to make contracts."

(*f.*) We cite with pleasure Ohio Life Ins. and Trust Co. *vs.* The Merchants' Ins. and Trust Co., 11 Humphreys, Tenn. R., 25.

It is held in this case that a corporation, by its agents, could contract or do any act in a foreign State which is not prohibited by the foreign State—of course within the scope of its limited powers.

LAWS OF TENNESSEE.

(*g.*) There are prohibitory laws in Tennessee.

But they apply only to foreign insurance companies.

See section 553, paragraph 9, Code of Tennessee.

(*h.*) Session laws of Tennessee, 1877.

TITLE OF ACT.

"An Act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, hold and convey real and personal property."

Approved March 21st, 1877.

(*i.*) This law was made one year and a half too late.

The Bartow Iron Company made this contract September 8th, 1875.

We have examined the statutes of Tennessee from its organization, and find no other prohibitory laws as to foreign corporations.

(*j.*) SESSION LAWS OF THE STATE OF GEORGIA, 1873.

AN ACT to incorporate the Bartow Iron Company.

We give below that part of said act which confers general powers upon said corporation, Sec. 31: "Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same, that for the purpose of developing the mineral resources of the State and encouraging the manufacturing of the same, Hugh McNeal, Francis J. Stone, Charles R. Stone, and their associates and successors, be and they are hereby constituted a body politic and corporate by the name of the Bartow Iron Company, and by that name shall be able and capable of suing and being sued, pleading and being impleaded in any court whatsoever, and may have and use a common seal, and may alter and renew the same at pleasure. And the said body corporate shall have all the powers and privileges, rights and franchises necessary and proper for the carrying on, and conducting the mining for iron ore, coal and other minerals, and preparing the same for use, and for erecting and operating furnaces, mills, machinery and fixtures necessary for the successful operation of all the

legitimate business of said company and the beneficial management of its property ; also, for the transportation of its iron, products, issues and profits of its mines, mills and furnaces, and property to market, and shall have power and authority to purchase, lease and hold any property, real, personal and mixed, which may be deemed by said company necessary for its purposes."

This law organizing the Bartow Iron Company authorizes it to take hold and convey lands for the purpose of mining coal and iron.

WE DEVOTE SAME TIME TO THE BRIEF OF APPELLANTS.

Brief page 3 :

(*a.*) The " *contest*" in suit, no one "was between H. L. Whiteside and Haselton, " " as to the title of an undivided one-half interest in S. E. $\frac{1}{4}$ sec. 3."

There was no contest, no issue was formed. It was the laches of complainants that no issue was raised.

(*b.*) " It was never plead or insisted that any of the other parties to either of these suits had any right or title in S. E. $\frac{1}{4}$ sec. 3."

(*c.*) Cravens had a $\frac{3}{8}$ interest. The Whiteside estate had $\frac{1}{8}$ interest.

(*d.*) " Upon the question of title to S. E. $\frac{1}{4}$ sec. 3, *substantially* the *same issues* are made."

(*e.*) There was no issues raised in suit No. 2 that were raised in No. 1.

(*f.*) See brief of appellees as to issues.
" And the *same proofs* are presented in both suits."
On page 107.

" Statement of facts as to ejectment suit " will be found a large amount of evidence not put in suit No. 1.

(*g.*) Haselton was not examined in No. 1.—not necessary—no issue as to title.

Brief, page 4.

"The transcript of the entire record of the case decided by S. Court of Tenn. is herewith presented to the court."

This is a mistake. No amended or supplemental bills are presented.

Brief, p. 5.

REGISTRATION.

(*a.*) The sheriff's deed pp. 97, 99 shows the lands conveyed to Haselton Feby. 2d, 1875, none of this was conveyed to H. L. Whiteside, April 26, 1870.

See Exhibit B, pp. 119, 120, this contains what she did purchase.

Brief, p. 6.

(*b.*) "In April 1870, H. L. Whiteside procured a deed to herself of this ¼ sec."

Let us see—

Alley conveyed an undivided half-interest of the fee in the lands dsecribed in deed, p. 95, to Haselton and J. H. Agnew, Jany. 7, 1859, and took vendor's lien to secure part payment.

And foreclosed the lien as to part in May 10, 18[illegible]67

(*c.*) Then made a deed for the rest, pp. 128, 126—April 26, 1870.

He had no interest in the fee of those lands.

Simply a vendor's lien for the balance due him.

Still he conveys the fee, although he did not have it.

INNOCENT PURCHASER.

(*a.*) The Bartow Iron Company purchased the S. E. ¼ sec. 3, Sept. 8, 1875.

The deeds to Haselton show that he had a right to sellit.

(*b.*) Boyce & Crawens sold $\frac{3}{8}$ interest to Haselton in January, 1874.

p. 152.

The Whiteside estate sold a $\frac{1}{8}$ interest to Haselton, Dec. 17, 187 4.

p. 152.

(*c.*) Haselton purchased $\frac{1}{2}$ interest at sheriff sale under foreclosure of Vendor's lien, Feb. 2, 1875.

So, on Sept. 8, 1875, he owned $\frac{8}{8}$ of the fee.

(*d.*) The Bartow Iron Company purchased from him the entire fee without notice that anybody else claimed any part of it. For a *valuable* consideration.

See Deed, p. 171.

(*e.*) It has not been impeached. So it is "AN INNOCENT PURCHASER."

"JUDICIAL SALE."

Brief, pp. 13 and 14.

(*a.*) Decree of the Chancellor, not of the "Supreme Court."

pp. 117 and 118.

(*b.*) "Writ of possession putting her in possession" "of the land."

Does not put her in possession of S. E. $\frac{1}{4}$ sec. 3.

See "Writ," pp. 120 and 121.

(*c.*) "Deed of Alley to Whiteside."

pp. 125 and 126.

Alley had no title to convey. The fee still stood in Haselton and Agnew. They still owed Alley money under vendor's lien.

So Alley's right still existed to foreclose. He could not make a contract with Whiteside not to foreclose a lien upon Haselton and Agnew's property.

So he is not "ESTOPPED."

ADVERSE POSSESSION.

(*a.*) Whiteside did not get possession of the southeast quarter of section 3 by Sheriff's Deed.
p. 119.

Then how did she get possession?

(*b.*) She did not get possession under writ of possession.
pp. 120 and 121.

(*c.*) Washburn on Real Property, vol. 1, p, 566, sec. 3, par 7.

"The possession of a tenant will not be presumed to be adverse to his co-tenant, but it will be for the benefit of the latter so far as preserving his title thereto."

The possession of one tenant in common is presumed to be the possession of all.

Barnard *vs.* Poe, 14 Mass., 434.
Story *vs.* Saunders, 8 Hump. (Tenn.), 663.

(*d.*) Separate occupancy, however long continued, will not affect the rights of the co-tenants, unless intended to be an exclusion of those with a view of gaining an adverse right.

Campbell *vs.* Campbell, 13 N. H., 483.

(*e.*) Haselton purchased Craven's three-eighth interest in January, 1874.

(*f.*) J. H. Agnew and Haselton purchased an undivided one-half interest of Alley, in January, 1859.

(*g.*) That fee was still in Haselton and Agnew in the southeast quarter of section 3, until July 2, 1875, when Haselton purchased it at the foreclosure sale.

(*h.*) This claim of adverse possession is thin as air.

Washburn on R. Property, par. 8.

The Statute of Limitations does not begin to run until one tenant is in sole possession, and under a claim adverse to the co-tenants.

Hubbard *vs.* Wood, 1 Sneed, 279.